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U.N. RESOLUTION 242
Its Original Intention and Later Interpretation
An Editorial by Its Proposer
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The Nuclear Plough Horses
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Steven E. Ferrey

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PROS AND CONS OF G.I. UNIONS
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LETTERS

responsibility for genocide

Cambridge, Mass.

In his review of Richard Arens's book, *Genocide in Paraguay*, and my book, *Victims of the Miracle: Development and the Indians of Brazil*, [*The Nation*, Feb. 18], Irving Louis Horowitz gives the mistaken impression that I argue the simple proposition that multinational corporations have primary responsibility for the uprooting and demise of Brazilian Indian tribes. Throughout my book I argue that a new partnership has emerged in Brazil among a highly repressive but development-conscious military government, a number of large multinational and state-owned corporations, and several international lending institutions. This partnership, rather than the Brazilian Government or the multinational corporations alone, is responsible for the vast social and ecological destruction in the Brazilian Amazon in recent years.

Professor Horowitz also claims that I provide no evidence that any multinational corporations in Brazil have an explicit policy of killing Indians. My argument again is much more subtle and complex. I attempt to demonstrate that these firms have had a powerful influence on resource, mineral, and development policies in Brazil. Through such influence, these corporations have played an important role in determining the direction of both Indian and agrarian policies.

In November 1974, Richard Arens and I spoke in Washington on the need for Congressional hearings in order to end the official U.S. Government silence on the killing of Indians in Paraguay and Brazil. We were joined by native leaders from Canada and the United States, by anthropologists, and by several human rights groups. To date, no such Congressional hearings have been held, and the official silence remains. It was essentially for this reason, rather than for philosophical or theoretical reasons, that Professor Arens and I wrote our books.

Shelton H. Davis, Director
Anthropology Research Center, Inc.

New Brunswick, N.J.

The letter by Shelton H. Davis represents a reiteration of the thesis enunciated in his book. It would prove both burdensome and repetitive to indicate why, in my review, I felt the thesis to be unconvincing. Clearly, our differences are not in the area of sentiment or beliefs. Both of us have worked long and hard to promote a decent American foreign policy, and we share strong moral beliefs in the need to protect innocent peoples from destruction by arbitrary and vicious regimes.

The issue is not even one of whether a new partnership has emerged in Brazil involving large multinational and state-owned corporations, and international lending institutions; clearly they have. But to focus responsibility for genocidal practices in the Brazilian Amazon on these institutions rather than squarely on the Brazilian Government, would be as ludicrous as claiming that these same multinationals or international banks are responsible for the more benign regimes of Colombia, Mexico, or Costa Rica. Further, to argue as Dr. Davis does, that his position is "much more subtle and complex" (to the point where he does not have to provide evidence) is to assume a causal linkage between influences on mineral resources and development policies and the genocide of the Indian population, which just is not demonstrated. Indeed, Dr. Davis himself is compelled to acknowledge repeatedly in his work both the role of individuals and the inner dynamics of Brazilian politics as they bear on the Amazon situation. The deeper one gets into the subject, the more central are the policy-making aspects of the Brazilian state, and the more peripheral the role of multinationals. Because Dr. Davis's volume simply does not want to acknowledge

(*Continued on page 309*)

EDITORIALS

Captives of a Tradition

Masthead followers will notice one new name (Navasky) and the absence of four familiar ones (the legendary former editors Godkin, Villard, Kirchwey and McWilliams). They will also see that with this issue Blair Clark, who has been responsible for most of the unsigned intelligence in these pages over the past two years, becomes a Contributing Editor.

What does it all mean? Carey McWilliams—who this week receives a special George Polk Award as "an exemplar of integrity throughout his long career"—once observed that "Those who at any time have been responsible for upholding *The Nation*'s good name have found themselves to some extent captives of its tradition." We are proud to be "captives" of a tradition which includes a distinctive blend of literary excellence and political courage, a tradition which identified the cold-war pathology without becoming part of it, a tradition which insists on a sophisticated view of the political process but is premised on a simplistic, absolutist view of the First Amendment, after the fashion of Justices Black and Douglas and constitutional scholar Thomas Emerson. We shall do our best to honor this tradition not on the masthead (which we think should reflect the present rather than the past) but in our pages.

Thus we refrain from promising a cascade of new departments, big-name writers, a Murdoch-ized cover. Rather, we intend to maintain *The Nation*'s anachronistic focus—on the issues. We recognize that this is a radical aspiration at a time when electronic journalism has turned news into entertainment and the secret of success seems to be yet another essay on hair spray, upholstery, Begelman's check stubs, comparative soups, or the treasures of Tutankhamen's final resting place.

It seems altogether fitting and proper, then, that Joel Seligman and Paul J. Rosenberg take this occasion (page 297) to instruct us on how another publication, the *Harvard Law Review*, has recently moved—painfully and slowly—to bring its own constitution in line with the spirit of the U.S. Constitution, briefly forgotten during the cold-war 1950s when Jonathan Lubell, a law student, was penalized for invoking the Fifth Amendment to prevent a Congressional committee from prying into his political beliefs and affiliations. His penalty? The *Harvard Law Review* kept him off the masthead.

Two Stories from Pike County

Pike County, Kentucky, which produces more coal than any other county in the United States and is at the bottom 3 percent of the nation in terms of income, is in the news because coal is in the news.

But there is another Pike County story. It found its way into the U.S. Supreme Court last week, and its implication for our polity is as dire as life in the dankest mine—namely, the position taken by Deputy Solicitor General Frank Easterbrook, who argued in the McSurely case that a Congressional investigator who committed

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burglary, or even murder, while uncovering relevant legislative information would "probably" enjoy immunity from civil or criminal legal action.

This is neither the time nor place to go over the facts of the 1967 raid on the Cumberlands home of Alan and Margaret McSurely, 1960s-style activists and fighters against social injustice. Anyone who hasn't already done so should read the shocking account of state and federal violations of the McSurelys's constitutional rights contained in Richard Harris's recent book, *Freedom Spent*. But we did think it relevant to ask Harris, also the author of *Justice*, a study of the Justice Department, to comment on the Deputy Solicitor's statement before the Court. Harris's eloquent outrage speaks for itself:

> Griffin Bell should be forced to resign. Obviously the Deputy Solicitor General didn't make such a statement on his own. Obviously it was approved—at least in substance—by his boss, the Attorney General. For him, the highest law-enforcement officer in the nation, to say that the government can rob and kill us and that there is nothing we can do about it must be the most astonishing statement ever made by a high official of the United States. Even John Mitchell never went that far. In fact, over the past year Bell has made Mitchell look like a sissy. In 1969, Mitchell's Justice Department claimed that the President could wiretap and bug people at will, despite the Fourth Amendment's stricture against "unreasonable searches and seizures." Lawyers around the country demanded Mitchell's resignation. In 1977, Bell's Justice Department claimed that the President could not be sued for exercising his "discretionary function" in ordering wiretaps. Nothing happened. Bell wants a law prohibiting citizens from suing individual government officials who commit crimes against them. Bell believes that Court awards of $1,000 per person for those whose mail was opened and read by the CIA is too much; indeed, he thinks that the government shouldn't have to pay for such crimes. Bell has refused to prosecute all but one of innumerable FBI officials who committed crimes. Bell whitewashed Richard Helms, former head of the CIA, who lied under oath before two Senate committees. And Bell fired U.S. Atty. David Marston for prosecuting Democrats. I think we need a new Attorney General.

Coalition of the Fed Up

The National Urban League and the NAACP have been taking up positions on energy, taxation and—at least with a view toward Africa—foreign affairs. At about the same time, other black leaders were making their peace with Jim Eastland and Strom Thurmond.

Why should they not? During the 1940s and 1950s, organized labor, coming out of its earlier battles with hard-won legal rights, extended its interests beyond narrow issues of the work place; it is time for blacks to do the same. And labor then, as blacks now, learned also to play the game of the politics of favors, which the Eastlands and Thurmonds know so well. The AFL-CIO hierarchy has never got beyond measuring every question and every politician by "what's good in it for organized labor; and what has he done for *us*?"

The statements of black leadership are of the same

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pattern; they are looking for black interests. Indeed, not only from these late developments but from the public record over the past few years, it becomes apparent that they are finding black interests to be pretty much where the AFL-CIO finds labor's interests: which is what Bayard Rustin always said would be so. They have stood for the same brand of governmental activism in behalf of economic growth, and they have put growth ahead of everything else, except protection against discrimination (which is the civil rights equivalent of labor's organizing rights).

The difference—and it is vast—between organized labor and blacks is that the former has and the latter have not independent power. The best that blacks have are marginal votes, and that is not enough. So they seek allies, and increasingly they concentrate their search in corporate headquarters. It is there too, and among politicians, that they bargain for services and funds. Those same business interests, which long since made their adjustments to the AFL-CIO, can comfortably support the black organizations. So contemporary black leaders, unlike those of movement days, are men and women with the skill to deal adroitly yet forcefully with the other elites of business, labor and politics.

I am for blacks (and other minorities too) getting as much as they can, and they are so far down the American ladder that no question of special privileges lies even close at hand. But I worry often whether this appeal to and negotiation with the economic and political power holders is the best way. It was not King's way, when he rose to stand against the war in Vietnam. He didn't say merely that it was bad for black people, though Lord knows it was. He said it was wrong, was evil. Sadly, as Carl Holman has recently noted, "He was the last man we had who could teach us not to be ashamed to have a moral attachment to a cause" (*The New York Times,* Feb. 27).

The liberals who stood firm with King in those hard days have since Selma turned their reforming energies to ending a war, defending the environment, wrestling with the CIA and FBI and Pentagon, defining a new status and freedom for women, and much more. Liberals are still the main reforming and progressive force of this nation—a fact which blacks increasingly defy by turning away from them. That is not surprising; liberals will still usually give lip service to whatever blacks want, but that's about all. With shining exceptions, they are accepting little part in what remains still our sorest national problem and challenge, the lifting of the massive load of black poverty, and that of other minorities. Suburban churches are hardly more lily-white than most liberal public-interest and civil liberties offices; and by now, like the churches, they have stopped fretting about it.

The present foreboding is that black leaders, through their insistence on representing solely *black* interests, will do what too many Americans would be glad to have done: convert our national problems of unemployment, crime and poor education into specifically *black* problems, so that the public can tell itself that the fault is not with the social and economic order but with the blacks themselves. We are so close to that point now that Mr. Carter can feel politically secure when he gives his black friends nothing more than a fairly long tether for Andrew Young in southern Africa, plus the face lift of administrative reorganization of the government's many anti-discrimination chores.

So it is to be hoped that black leadership will more and more speak to and act on the broad range of issues troubling the Republic. But it is even more to be hoped that they will spurn the crumbs the Jim Eastlands have for them and the symbols—such as the present Humphrey-Hawkins bill—which is all their political bargaining gains them. Probably at this time they are the only ones who could, if they would, speak effectively and strongly for a constituency already in being, saying that poverty and all its effects are implicit in the present structure of the American economy and offering proposals for its reconstruction. The problem is not that they are trespassing on nonracial turf. It is that in doing so they ask for so little, and nothing, really, that their friends in business and labor aren't already pressing for with every instrument at hand: economic, i.e., corporate, growth.

What the times call for so urgently is a coalition of the fed up: those fed up with poverty, those fed up with money managers and industrialists free to pursue worldwide the cheapest labor, lowest taxes and least public oversight, and those fed up with the political insanity that has our government merely a satellite in orbit around the Pentagon and the multinationals. We don't seem very close to such a coalition, but Mr. Carter's maunderings may haply drive us to it.

For the time being, though, the best and brightest are again on the loose in Washington. We should all, as we slouch along our separate ways, remember where they landed us last time. LESLIE W. DUNBAR

Resolution 242

On the following page we publish an editorial by Lord Caradon who in 1967, as British Minister of State for Foreign and Commonwealth Affairs and Permanent Representative at the United Nations, proposed Resolution 242 to the Security Council.

For many years the Israelis have stated that what was at issue in the Middle East conflict was "security," not "territory." And for ten years Jerusalem held to this position by its public acceptance of the 1967 U.N. Resolution 242. Now, Prime Minister Menahem Begin has interpreted the resolution specifically to exclude withdrawal from the West Bank and Gaza. Begin's attitude on 242 has left him vulnerable to the charge of attempting to change the rules in the middle of the game. The settlements issue—which has already precipitated the breakdown in peace talks with Egypt's Anwar Sadat—has sharply divided Begin's fragile Cabinet coalition and prompted speculation that he will be forced to resign. (See "Can He Bend or Must He Go?" by Milton Viorst, *The Nation,* December 24, 1977.)

Abba Eban, Israel's former Foreign Minister, has commented on the ramifications of Begin's policy:

> If the present Israeli Government now seeks to interpret 242 as having no application to the West Bank and Gaza, it will come into conflict not only with the

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policy of the entire world community, but also with established Israeli jurisprudence. . . .

It was always been the U.S. position that 242 requires some withdrawal on all three fronts—the Sinai, the West Bank and the Golan Heights. President Carter is certain to press Begin on this point during his visit to Washington.

Thus, the resumption of peace negotiations now appears to turn on Begin's position on 242. Meanwhile, Sadat is still waiting for a substantive response to his Jerusalem initiative of almost four months ago.

Lord Caradon on His Resolution

Controversy continues on the wording of Security Council Resolution 242, and one may be forgiven for thinking that questions arise not from genuine doubt but more from wishful thinking or from natural prejudice —often from both.

I would maintain that if the resolution is read as a whole* its purposes are perfectly clear.

The basic principle, set out in the resolution's preamble, "the inadmissibility of acquisition of territory by war," though seldom quoted, is fundamental. It rules out claims to retain territory on the ground that it was conquered.

Two criticisms of the resolution have persisted—one that it should have restored the 1967 boundaries in the Middle East and the other that it did not refer to Palestinian rights.

As to the boundaries, we did not seek to establish the 1967 boundaries as a permanent frontier for the very good reason that the 1967 boundaries, which were in fact no more than the cease-fire boundaries of a certain night twenty years before, were unsuitable for a permanent international frontier. It has been proposed that the permanent "secure and recognized" frontier for Israel should be decided after a Boundary Commission has studied the position on the ground and heard both sides and then made impartial recommendations, bearing in mind, of course, the "inadmissibility" principle.

The more serious criticism was that the resolution, while calling for a solution of the problem of the refugees, did not speak of Palestinian self-determination. But it is well to remember that when we drew up Resolution 242 we all took it that the occupied territories would be restored to Jordan. Everyone, including the Arabs, so assumed. It was after 1967 that the Palestinians advanced their claims—much to their credit. This was a development of the utmost importance but subsequent to 1967.

The Palestinian claim must be recognized not by amending or abandoning the unanimously approved principles of the 1967 resolution but by adding to them—by adding the principle that the Palestinians must be given the freedom of self-determination in their own homeland in the restored territories.

As King Hussein has repeatedly said: "Israel has stated that it will not tolerate an independent state in Palestine or the West Bank. Israel has no right to make such a decision. Neither have I. No one has a right to make that decision save the Palestinians themselves."

So what is now required? Not a reversal or a reduction of the 242 principles but an addition, a new resolution bringing the ten-year-old resolution up to date and providing:

(*1*) For self-determination for the Palestinians in their own restored homeland.

(*2*) A two-year U.N. trusteeship of the occupied territories of the West Bank to allow time for Palestinians to take their own decisions, to decide on their constitution and to hold their own elections.

(*3*) Meanwhile agreement on cessation of all violence and all settlements in occupied territories.

(*4*) Creation of a Boundary Commission to make proposals to the Security Council for a permament "secure and recognized" frontier.

(*5*) Provision for international guarantees to preserve the right of every state in the area to live in peace "free from threats or acts of force."

Israel must be secure. Palestinians must be free. One depends on the other: both are attainable, but not one without the other.

A lasting peace will be achieved not by going back on what has been already agreed and often confirmed, but by going forward to give effect to the principles which have long been accepted and can now show the way to a lasting peace.

---

* Resolution 242 (Adopted November 22, 1967)

THE SECURITY COUNCIL,

EXPRESSING its continuing concern with the grave situation in the Middle East,

EMPHASIZING the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

EMPHASIZING FURTHER that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. AFFIRMS that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. AFFIRMS FURTHER the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. REQUESTS the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. REQUESTS the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

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THE NUCLEAR PLOUGH HORSES

CARTER'S UNSTATED ENERGY PLAN

STEVEN E. FERREY

President Carter came to the White House with the crucial support of average consumers and environmentalists concerned about nuclear energy. He appealed to those constituencies with a tough stand for recourse to nuclear energy only as a "last resort." But one year later the Nixon policy of rapid nuclear development still inhabits the White House like a spirit. It is embodied in the mind-set of the administration's top energy policy makers, and mirrored in its legislative priorities. What was to be a last resort has been placed at the head of the Carter energy program.

As a candidate, Carter moralized against the inherent hazards of nuclear proliferation, and criticized the Nixon-Ford Project Independence, a government-business orgy of exotic and expensive development of energy technology. Carter promised the public that development of, and reliance on, commercial nuclear power would occur only as a "last resort with the strictest possible safety precautions." He asked the public to "trust" him, an ex-nuclear engineer, to contain the spread of this most lethal of modern technologies.

Carter took office carrying a carte blanche that most progressive politicians would envy. He brought with him a mandate from an electorate seeking reform after the previous eight years of dour Republicanism. Furthermore, he enjoyed a reservoir of good will and cooperation among activist consumer, environmental and social reform groups. The energy issues preoccupying the nation in 1976—foreign dependence on oil, lack of innovation, nuclear proliferation—demanded new talent and creative action. The execution of a bold energy policy cried out for new administrators, but this administration has confined itself to consolidating and streamlining pre-existing staff.

When the President appointed Republican James Schlesinger to be the new administration's energy czar, he sent a tremor down the spines of many of his strongest supporters in the consumer and environmental communities. Aloof and removed in his self-confidence, Schlesinger is the antithesis of Carter's campaign promise to create an administration open and sensitive to the average consuming public. James Schlesinger served Presidents Nixon and Ford as director of the CIA, as chairman of a blatantly pro-industry Atomic Energy Commission and as a hawkish Secretary of Defense. In each role, he championed nuclear power development, and as Secretary of Energy he has quickly printed his recognizable monogram on the nation's energy policy.

The nascent Department of Energy (DoE) under Schlesinger resembles an organization that only Westinghouse could love. Industry supporters from the GOP years have been promoted to key posts. As a case in point, Robert Thorne has been made head of the Office of Energy Technology within DoE; it is the division responsible for administering the competing commercial development of nuclear, fossil and solar technologies. Thorne, when he was in charge of nuclear research at the Energy Research and Development Administration's (ERDA) San Francisco office, distributed at government expense a pro-nuclear pamphlet entitled "Shedding Light." This was done at the time when Californians were preparing to vote on the 1976 Nuclear Safeguards initiative. The initiative was defeated. Thorne subsequently awarded the industry-funded, pro-nuclear California Council on Environmental and Economic Balance a highly questionable grant of $105,000 to "increase energy awareness." During confirmation hearings, Friends of the Earth testified that he demonstrated "an unreformable pro-nuclear bias, a lack of sensitivity to the role of the public and the states in energy decision making. . . ."

When Schlesinger cannot find the talent he requires among the holdovers from the Republican years, he has relied upon the oil interests to act as recruiting agents for top policy-making posts. As general counsel, his department's chief legal authority and a key policy maker, Schlesinger nominated Lynn Coleman, a Houston attorney. This appointment has generated renewed debate over the "revolving-door" relationship between private business and public service. (See "A Good Word for the Revolving Door" by Rep. Bob Eckhardt, *The Nation*, February 18.) Coleman's knowledge of energy matters comes from a career representing large oil and gas companies as a partner in the Texas law firm of which John Connally is also a partner. At the same time, while he has been recruiting industry representatives, Schlesinger has repeatedly refused to name an Assistant Secretary for consumer affairs and competition, a post provided for in the legislation creating the new DoE. With this function given subordinate status, there is no effective counterbalance within DoE to industry lobbying.

Of twenty-five appointees to major DoE policy-making positions, nine previously worked for the Defense Department or elsewhere in the military, seven were with the old AEC, and eleven are holdovers from energy jobs under Nixon and Ford. The Defense Department because of its investment in nuclear weaponry, the AEC because of its ignominious history as an advocate of commercial nuclear energy, and the energy employees of the Nixon-Ford years because of their ties to the large energy developers, have in common a background of experience in the deployment of nuclear technology, to the exclusion of the technologies of solar energy. By the pattern of staffing, a business-as-usual nuclear policy has been implicitly determined.

The pro-nuclear bias of the DoE extended beyond staffing. The opportunity during the past year to name

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three of the five members of the Nuclear Regulatory Commission (the NRC is the new reactor licensing segment of the old AEC) opened the way for the administration to control the technology "of last resort." At the very least, pro-consumer appointees should have been installed to balance the existing industry bias of the NRC. The nominations of Joseph Hendrie, a nuclear scientist at the government's Brookhaven National Laboratories; Peter Bradford, a moderate public utilities commissioner from Maine, and Kent Hansen, an M.I.T. professor of physics with extensive consulting ties to Westinghouse and General Electric, suggest the extent of Carter's commitment to a new direction in nuclear policy. The Senate Environment and Public Works Committee found Hansen's qualifications so inadequate and his professional associations so biased that, in an unprecedented move, it rejected this reportedly handpicked Schlesinger candidate. Sen. Gary Hart found that, despite Hansen's extensive employment by the vendors of nuclear technology, he exhibited "a noticeable absence of thought, background and depth on such questions as safety and waste disposal."

The disturbing quality of the Carter/Schlesinger NRC appointments is that they cling stubbornly to the view that the business elite is a neutral, apolitical arbiter of government policy, scrubbed clean of political motive by its "purely profit" interest in nuclear technology. Similarly, the public interest community is seen as composed of emotionally involved advocates, unfit as commission members to regulate industry "objectively." This bias ignores the reality that nuclear policy is created ultimately by political rather than technological debate. Further, it violates at the core the President's campaign promise to open up decision making to the public.

Carter's nuclear policy during the first year has been marred by a noticeable lack of vision, not to mention the awkward execution. The priorities assigned to an energy research budget dictate the shape of our energy future. DoE has bestowed a mere cost-of-living increase on the solar research budget legacy of Gerald Ford. The current (fiscal year 1978) budget for all forms of nuclear research, including military, is five times that of the $319 million solar budget. And the bulk of the solar budget increase is directed toward large-scale and exotic centralized solar electric systems, to be built by large corporations, rather than toward rooftop-scale devices.

Renault, Sacramento Bee

The influence of energy research and procurement budgets on the shape of society cannot be overstated. After World War II, spinoff from nuclear weapons research, coupled with various federal subsidies to major reactor manufacturers and utilities, spawned the age of commercial nuclear development. The nation now faces the similar decision of whether to resist or embrace solar technology. Solar technology has proven itself as a competitive source of heat, and is developing rapidly as a source of electricity. Hand-fabricated photovoltaic solar systems currently exhibit marginal generating costs of about $15 per watt, ten times the cost of electric generation by conventional nuclear sources. However, several energy experts, ranging from Dr. Barry Commoner to ERDA-funded consultants, predict that a vigorously expanded program of research and procurement of mass-produced solar cells could produce electricity from the sun at half the cost of nuclear power. (See "The Reality of Solar Power" by Bruce Welsh, *The Nation*, January 21.) More important, opportunity for individual or community control of power systems would follow. Sen Gaylord Nelson of Wisconsin has put his finger on what would be involved in any shift from nuclear to solar power:

> The suspicion is unavoidable that absurdly low estimates of the solar contribution during the next twenty-five years are not of what the estimaters think the country *could* do . . . but rather what they hope the country will do. Not because doing so little is in the best interests of the great majority of Americans and other people of the world but because doing so could possibly threaten existing investment in other technologies.

Ignoring these opportunities, the business-as-usual research priorities at the DoE foretell a future in which solar power remains the undernourished stepchild of an exorbitantly expensive and vulnerable nuclear age.

The administration's legislative energy package, in 113 separate provisions, does not once mention nuclear energy, but that does not mean that commercial reactors have been reduced to the status of "last resort." They lurk as the plough horses of the plan's quest for expanded electric capacity.

Though kept offstage, the rapid growth of commercial nuclear power can be seen through the nooks and crannies of the energy legislation. The Carter strategy calls for a 53 percent increase of electric energy by 1985. With new oil or gas generating capacity prohibited and the environmental limitation on coal generation, nuclear power is the obvious candidate for this expansion. The solar and conservation tax credits offered in the bill are so

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weak, especially after the Senate emasculated electric rate reforms, that fission silently assumes the star role by legislative default.

Schlesinger and Robert Fri, former acting director of ERDA, admitted in Congressional testimony that the Carter plan presupposes the construction of 350 to 380 large commercial nuclear reactors by the year 2000. This fivefold increase over the sixty-eight now in operation does not differ appreciably from the goal of the Ford administration. The only distinction between the two regimes in this matter appears to be that, while the Republicans brazenly polished the lamp containing the nuclear genie, the Democrats deliver incantations about "last resorts" while stealthily uncorking the vessel.

If in its first year the Carter administration cannily played down the nuclear issue, it looks in its second year to be taking overtly the nuclear offensive. Two pieces of legislation now in preparation are designed to accelerate the nuclear timetable. The "Nuclear Reform Act," as originally drafted, attempts to streamline and expedite the nuclear licensing process through, among other devices, preapproval of standardized reactor design. The draft sought to eliminate meaningful public participation, despite the fact that such participation adds an average of only five months to the ten-year siting process. Provisions in the original draft that would have eliminated right of full-status intervention, citizen right to counsel, right to cross-examine industry witnesses and right to present evidence on safety or economic issues, have been modified in subsequent drafts.

Even within the White House, criticism of the blind direction of the nuclear offensive has been audible. The licensing legislation pretends that the nuclear option exists in a vacuum where the sun does not shine. Gus Speth, a member of the President's Council on Environmental Quality, termed the most recent draft defective because it "fails to address the unresolved health and safety issues associated with nuclear power development and fails to require that new nuclear plants not be constructed where there is a feasible conservation or solar alternative."

If the "Nuclear Reform Act" is the administration's attempt to shorten the gestation period for a reactor, Carter's plan for federal subsidy of radioactive waste disposal is the nuclear industry's insurance program. The economics of nuclear power have been clouded, in part, by the technical unknowns and potential costs of long-term waste management. To date, no means has been devised to store safely large quantities of lethal radioactive waste for the necessary hundreds of thousands of years. Public concern about radioactive storage has increased in reaction to recent revelation of the alleged theft of radioactive isotopes from a Pennsylvania fabrication plant, and the recent truck accident near Springfield, Colo., when a large quantity of concentrated uranium was strewn on a highway.

Existing private waste storage facilities are scheduled to be filled to capacity in as little as two years, according to the House of Representatives Subcommittee on Oversight and Investigations. With no practical proven means of safe disposal in sight, the administration has cast itself as the sorcerer's apprentice of radioactive waste. In legislation to be introduced this spring, it will propose to take title to all high-level commercial wastes, and to store them indefinitely. A one-time fee, generously equivalent to the cost of private storage for only ten years, will be asked of industry participants. This bargain price frees a heedless industry from a problem that neither it nor the government has even begun to solve in more than two decades of study and testing. It will subsidize the nuclear future at taxpayer expense. In the understatement of a report issued by Congressman Ryan of California, the administration is "boldly forging ahead," despite problems "gargantuan in nature."

In every sense, this is amoral policy making. The effect of the legislation removes from the profiteers of an ultra-hazardous technology any responsibility, economic or moral, for the extremely carcinogenic byproducts of the activity. The Swedes and the Germans, faced with a similar inability to solve the nuclear waste problem, have declared moratoriums on nuclear construction. The Carter solution, to the contrary, imposes on the taxpayer the ultimate costs and risks of attempting to develop a safe method of waste storage, and removes from the industry any economic incentive to assume responsibility for the social costs of its actions.

Without doubt, President Carter has fostered some improvements in nuclear policy. Nuclear nonproliferation has been stressed, reprocessing of plutonium has been deferred, and the Clinch River breeder reactor program has been terminated. Yet these gestures pale against the dimensions of the nuclear reality which confronts the administration. In an era when multinational access to nuclear destruction has been reduced to the diversion of 10 kilograms of plutonium and the assistance of one bright college physics student to design a detonator, it is not enough to hoard nuclear technology jealously. The administration is naive to expect that Third World countries will repel the nuclear genie, when the United States provides no example of an economy moving toward reliance upon benign renewable resources.

Ultimately, the flaw in the President's nuclear policy is a failure to comprehend the political dimensions of energy decision making. Carter has drafted into his service the best administrators that the Trilateral Commission, the big corporations and their law firms can provide, and has charged them with "managing" energy policy as if it were the Social Security program. Energy policy, especially nuclear policy, is not susceptible to management using "value-free" formulas. When all the cost/benefit calculations have been performed, the choice in energy policy is fundamentally political, as are the sociological and foreign policy repercussions which flow from the energy path the nation chooses.

Carter's energy aides cling to the myth, inherited from their Republican predecessors, that policy is best created while wearing political and economic blinders. When questioned recently about the effect on competition of proposed corporate financial incentives for developing gasification technologies, a highly placed Schlesinger as-

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sistant responded, "That's an ideological matter, we don't deal with those." By ignoring the influence of policy upon competition, thus maintaining its administrative "objectivity," the DoE is choosing to disregard the existing climate of subsidy and economic concentration that contributes to the current "energy crisis." To ignore the institutional structure and social impacts of waging the "moral equivalent of war," is to fight an amoral war.

The rhetoric surrounding the Carter energy agenda has not been matched by the reality of appointments, budgets or programs. The administration has talked creative new strategies, while in fact working to minimize the visibility of ongoing Nixon-Ford policies in the nuclear arena. Perhaps it is too much to expect a national politician to carry out the controversial programs of a campaign platform. What is clear is that twelve months ago Carter had a rare opportunity to direct the country, and perhaps the world, toward a means of living and producing in a more humane and equitable manner. The general good will and trust the President inherited were squandered in that year, and the opportunity to regain them may not come again. □

JONATHAN LUBELL & THE *LAW REVIEW*

How Harvard Regained Its Nerve

JOEL SELIGMAN & PAUL J. ROSENBERG

In its March issue, the current student editors of the *Harvard Law Review* are taking the unprecedented step of publicly apologizing to Jonathan Lubell, who in 1953 was excluded from membership on the *Review* because of his radical political beliefs. The student editors will also offer Lubell "affiliate membership" and announce that its current members have initiated an amendment to the *Review*'s constitution which, if also approved by its Board of Overseers and Board of Trustees, will in future bar discrimination against potential members because of their political convictions.

Acting twenty-five years after the height of the McCarthy investigatory fervor, the *Law Review*'s action may appear to be a simple matter of reversing an earlier injustice. Yet the manner in which Lubell initially was excluded and the manner in which his reputation ultimately was restored tell far more about the basic institutional tensions underlying this nation's leading Law School than they do either about the earlier influence of McCarthyism or the resurgence of concern for civil liberties.

In the popular imagination, few institutions have been more closely associated with liberal intellectual beliefs than Harvard Law School. Since the turn of the century, the writing and actions of the Law School's faculty and graduates frequently have defended such democratic concepts as judicial restraint, freedom of speech, equal protection, federalism and the rule of law. If it would be fair to characterize the disparate intellects of Harvard Law School's most celebrated professors and alumni as adhering to a common faith, it would be that of constitutional liberalism.

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Built into the structure of the Law School's curriculum and practices, however, is a paradox. Whatever the intellectual beliefs of some of its alumni, Harvard Law School's historic function had been to prepare students to practice in the nation's leading private law firms. To this day, in such leading firms as Wall Street's Dewey, Ballantine, Bushby, Palmer & Wood; Boston's Ropes and Gray; and Washington D.C.'s Covington & Burling, half or more of the firm's partners are graduates of Harvard Law School.

In the post-World War II period few men better personified this paradox than Erwin Griswold, the Law School's dean from 1946 to 1967. A self-styled "Charles Evans Hughes type of Republican," Griswold rarely hestitated to state his strongly held liberal political beliefs. He would defend *Brown* v. *Board of Education*, the Supreme Court's 1954 school desegregation decision, when it was most unpopular to do so, not just because it was the law, but also, he would explain, because: "Both by inheritance and training, this concept of equality has been central to my conception of America."

At the same time, no other Harvard Law School dean ever made so plain his enthusiasm for big-city law practice. More than once Griswold had observed in addresses to alumni that he wished he could have had two careers: one as a law-firm practitioner in his native city of Cleveland, the other as a law professor and Law School dean. Throughout his twenty-one years as dean, and later as Solicitor General of the United States, Griswold attempted to reconcile the conflicting demands of democratic liberalism and corporate law practice by emphasizing that law is a value-neutral craft. It was during the crucial year of Sen. Joseph McCarthy's type of anti-Communist investigations that this reconciliation most obviously broke down.

In 1947, Griswold had joined three other law professors in writing a letter to *The New York Times* protesting President Truman's loyalty order. In 1950, when the start of the Korean War intensified the vehemence

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of the anti-Communists, he rejected a demand by Samuel Sears, president of the Massachusetts Bar Association, that the radical Harvard Lawyers Guild be disbanded by publishing a letter in which he said, "I believe in free speech; in free press; in academic freedom, and in the free commerce of ideas."

But in 1953 Griswold faltered as Sen. William Jenner announced field hearings in Boston on communism in education. In mid-March, two second-year Law School students, Jonathan and David Lubell, were subpoenaed to testify before Jenner's roving Senate Subcommittee on Internal Security. Although neither of the twin brothers had been politically active at Harvard Law School, both had been organizers for radical organizations while undergraduates at Cornell University.

The Lubells recall that Griswold strongly urged their full cooperation with the Jenner subcommittee. The dean argued that declining to answer questions on the basis of the Fifth Amendment's privilege against self-incrimination was an admission of criminal guilt. To the dean's credit, he soon made a complete study of the issue and substantially revised his opinion. But before the hearings, David Lubell recalls, Griswold told them "that we were being selfish. We were going to do great harm to the school."

On March 27, the Lubells testified before the subcommittee. Jenner introduced Jonathan by stating, "We have evidence that this student is an active Communist organizer." The subcommittee then proceeded to ask a series of questions such as, were the Lubells members of the Communist Party? Had they organized for the Communist Party at Cornell University or Harvard Law School? Had they distributed the *Daily Worker*? Had they written briefs for the National Lawyers Guild? The Lubells refused to answer several questions, invoking the Fifth Amendment privilege against self-incrimination.

Although the Lubells issued a statement declaring "unequivocally" that they "have not, nor do we advocate, overthrow of our government by force or violence," two days later Harvard Law School Prof. W. Barton Leach circulated a letter to the Law School's faculty implying that the Lubells could have pleaded the Fifth Amendment privilege against self-incrimination only "to the crime of conspiring to overthrow the government of the United States." He recommended that the Lubells be expelled, and in this he was soon joined by Sears and several Boston newspapers.

Griswold called a special faculty meeting. Pinioned between an enraged minority of his faculty that favored ousting the Lubells, if not jailing them, and an equally enraged majority that considered Jenner's hearings a witch hunt, Griswold proceeded delicately. By then he had begun research on the Fifth Amendment and no longer could subscribe to a position as extreme as that of Professor Leach. But, as the dean explained in an interview twenty-three years later, his major concern was to do a "selling job" on the faculty "to put over his conclusion."

The result was a confused, internally contradictory speech to the law faculty. In a typical, forthright manner, Griswold began by explaining that the statutes of Harvard University permit a faculty to dismiss a student only in cases of serious misconduct. "What is the situation now in the cases of the Lubells? The clear fact, I believe, is that no evidence of any sort is available to us which proves . . . that they have been guilty of misconduct."

But then Griswold hedged. With sweeping deference to Professor Leach, the dean asserted: "It is clear that no person can now be a Communist, or could have been a Communist in the recent past, without full awareness of the fact that he was engaging in a Communist conspiracy against the United States. My present attitude toward [Senator Jenner's] subcommittee is in no sense one of hostility. On the contrary, it is one of entire willingness to cooperate." Those could not have been easy statements for Griswold to make. By March 1953, Jenner was known to the American public principally as the Senator who had called Gen. George Marshall "a front man for traitors," and "a living lie"; who had stated after Gen. Douglas MacArthur was fired, "This country is in the hands of a secret coterie which is directed by agents of the Soviet Union," and whom Presidential candidate Dwight Eisenhower had refused to embrace in 1952 because, as Eisenhower explained, "I felt dirty from the touch of the man."

Although recommending that the faculty table the motion to expel the Lubells, Griswold argued that, since "the fact that privilege is claimed may justly lead to deep suspicion . . . it is very clear that the Lubells must be watched with extreme care from now on. . . ." The Lubells's claim of privilege should "operate as an effective barrier against the admission of the Lubells to the bar of any state in this country."

A divided faculty voted not to expel the Lubells, but four days later Professor Leach circulated a second memorandum to the faculty explaining how the Law School's admission policies could be structured "to avoid further Lubell cases." In late April, Leach published in *The Harvard Crimson* a letter he wrote to the Lubells's draft board recommending that both brothers be immediately inducted. The head of the New York City Selective Service publicly refused.

The lack of faculty leadership resulted in the Lubells's ostracism at Harvard Law School. Within a week after their appearance before Senator Jenner's subcommittee, the *Harvard Law Record*, the Law School's student-run newspaper, forced both brothers to resign their editorial positions—"consonant," the newspaper explained "with the necessity for maintaining a well-ordered society." About the same time, the Legal Aid Bureau, also operated by Law School students, pressured Jonathan Lubell to quit. Benjamin Harrison Frankel, a classmate of Jonathan Lubell, recalled sixteen years later that "only two persons in the entire bureau defended his right to membership." Other Legal Aid members explained that Boston attorneys had indicated to the bureau that its existence would be jeopardized if they retained Lubell.

Both Lubells claimed that in classrooms students re-

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fused to sit near them. "In terms of today's atmosphere," David Lubell believed, "it was unbelievable. It was so bad that when we came into the Harkness cafeteria people would leave the table." Although no faculty member was overtly hostile to the Lubells, not one publicly indicated support for the embattled brothers.

Despite these pressures, his grades for the first two years at the Law School earned Jonathan the right to serve on the *Harvard Law Review*. This was, and is, the highest honor attainable by Law School students. Each year about twenty-five students in the first-year class of 550 and another six to ten students in the second-year class are chosen on the basis of grades to edit the *Review*. In their subsequent careers, *Law Review* editors enjoy extraordinary opportunities to clerk for United States Supreme Court Justices, teach at leading Law Schools—such as Harvard—or work in the most prestigious law-firm and government jobs. Some sense of the dimensions of this honor is conveyed by Supreme Court Justice Felix Frankfurter's memory of a classmate pointing out the editor of the *Harvard Law Review*: "If he'd said, 'That's the Archangel Gabriel,' he couldn't have been more awed. . . ." Or more simply by a 1969 Harvard Law faculty report, which acknowledged with disarming candor, ". . . we can hardly deny the omnipresence of the question, 'Was he on the *Review*?' "

In Jonathan Lubell's case it was an honor not to be enjoyed. Under the *Harvard Law Review* constitution, active members technically "elected" students whose grades were sufficiently high to qualify for the *Review*. During the previous forty years, with few, if any, exceptions, students so qualified had been elected to the *Review*. Jonathan Lubell, however, was asked to wait until all the *Review*'s active members returned in September for the formal election vote.

Uncertain of what to do, Andrew Kaufman, then president of the *Review*, today a Harvard Law School professor, asked for a meeting with the *Law Review*'s trustees, who included Griswold and Prof. Paul Freund. Griswold and the other faculty members "ducked out of the decision," as Griswold now puts it. They informed Kaufman it was the students' decision to make.

A delegation of three *Law Review* members met with Jonathan in New York City to persuade him to draft a letter that would make his presence on the *Review* palatable to the other members. Lubell recalls the meeting. "Three-fourths of the interview was a discussion of the Korean War. In some way, this was a qualification for being on the *Law Review*. . . . I was unalterably opposed to the war. . . . Despite the fact that I was very anxious to be on the *Review*, I didn't pretty it up." Nonetheless, Lubell agreed to write the *Review* a letter reiterating that he did not "advocate overthrow of our government by force or violence." But what Lubell actually sent the student editors was a sharply worded attack on the Jenner subcommittee.

Stuart Land, then a *Law Review* editor, believes that Lubell's letter to the *Review* "hurt him . . . it was a hostile, argumentative document. . . . He said he had a right to be on the *Review* and told us to lump it. . . ." After a heated debate, the third-year members of the *Harvard Law Review* voted 16 to 8 not to elect Jonathan Lubell, even if he satisfied certain "conditions." Both Lubells remain convinced that the vote was unprincipled. David charged that the student editors didn't accept Jonathan, "because they thought Jon being on the *Review* would be a professional liability to them," or, as his brother put it, the editors "feared it would hurt their careers."

Land, today a partner in the Washington D.C. firm of Arnold and Porter, concurs. He noted his fellow editors' concern that "Jon being on the *Law Review* would disadvantage members of the *Review* in passing security clearances necessary for army commissions and other government jobs." Most other editors of the *Review* disagree. One, who specifically requested not to be named in any published account of the incident, urged that the majority of the editors were more concerned about civil liberties than about jeopardizing their careers. In his view, Lubell would have been voted membership but for the hostility of his letter.

Professor Kaufman also disagrees that the decision was motivated by personal concerns. In an interview, he asserted that the "underlying factual situation"—which he believed would be inappropriate to discuss—made the decision inevitable. Nevertheless, he was troubled by it. The last thing he wanted to do was "to give aid and comfort to McCarthy." He felt embarrassed when the *Crimson* published a heavy-handed editorial supporting the *Law Review*'s decision, entitled "Immunizing the Lubells."

Shortly after the *Law Review* vote, Dean Griswold concluded that he and the student editors had been wrong. He regretted "ducking out" on the *Law Review* decision and later wrote a letter of support when the Lubells sought admission to the New York bar. Within a few months of the *Law Review* vote, Griswold began publicly speaking out in favor of the propriety of witnesses who invoked "an old and good friend, the Fifth Amendment." These speeches earned him a citation from the Harvard University faculty and were published in a widely read book. In retrospect, Griswold would recall his irritation that more law professors did not "do anything during the McCarthy period."

But his deference to the more zealous anti-Communists on the faculty came at a cost. The ostracism of the Lubells continued through their last year at Harvard Law School. It was not until 1958—four years after they were graduated—that they were licensed to practice law. And, although several *Law Review* members that were interviewed in preparation of this article now regret their action, no member of the 1953 *Law Review* has ever personally apologized to Jonathan Lubell. In 1969, when the Legal Aid Bureau became the first of Harvard Law School student organizations to "deplore" its earlier actions, the *Law Review* publicly indicated that it would not do so.

It was only in the late spring of 1977 that the *Law Review* began an examination of its earlier action. Bruce Howard, a member of the *Review*, volunteered to write a memorandum concerning the Lubell incident. It was distributed in October, but Michael Peterson, the *Law*

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Review's 1977-78 president, delayed for more than a month before convening a meeting to consider Howard's recommendations. Among the student editors present there was a near-unanimous sentiment that something should be done, that at least a statement should be published apologizing to Lubell. But some *Review* members feared it was inappropriate to appear to condemn a prior board of editors. One editor, sensing that no apology could very well avoid that implication, suggested that it be printed on an errata sheet which could be detached from the *Review* by readers who were offended by it. This "paper airplane" proposal was probably not meant to be taken seriously. Instead, the student editors asked Howard and three other students to draft a statement of apology.

For days after Howard delivered his statement to President Peterson it was not posted on a bulletin board for members to read. Howard recalls Peterson stating, "Oh, I couldn't find anyone to type it." The *Law Review* meeting to consider taking action in the Lubell matter was canceled twice, then finally held on December 19. Peterson justified the cancellations because "the work schedule impinged."

With more than sixty student editors in attendance, the *Law Review*'s editors with virtual unanimity initiated an amendment to their constitution to provide that future members should not be barred on account of their political beliefs; they also approved the statement of apology and agreed that it should be published in the *Review*. But a protracted debate occurred concerning whether to offer Lubell "honorary" membership. This was opposed by various members as being undignified or naive—one editor comparing it to Caligula electing his horse to the Senate. Other editors argued that honorary membership had no "constitutional status."

Howard's argument that granting Lubell membership was the appropriate remedy for the past wrong was disputed until a fellow editor, John Sexton, sharply asked, "Why is this the sticking point of the meeting?" Sexton asked his colleagues why, though they could easily agree to apologize for the past by adopting a statement, and felt no hesitation about binding future boards by initiating a constitutional amendment, they balked when the burden was squarely upon themselves to act in the present. After Sexton's remarks the *Review* fixed on the formula of according Lubell "affiliate membership" which one editor noted was more suitable than "honorary" membership, since it did not sound like the approval of past accomplishments implicit in an honorary college degree.

Sexton's question, nonetheless, continued to trouble members of the *Review*. Both Howard and Peterson were doubtful that the 1977 board would have acted any differently than the 1953 board if they had faced the Lubell decision twenty-four years earlier. Peterson described the ostracism felt by a few members of the present *Review* who favored the Supreme Court affirming the *Bakke* decision's proscription of "reverse discrimination." He doubted that a student who favored South African apartheid would be tolerated on the *Review*. Most emphatically, he cited the problem of being associated with a student-run journal that people assume is influential "because so many editors go on to assume powerful positions in the real world." In Peterson's view, his fellow editors "are just students," the *Review*, "an academic journal," its publication "removed from the real world."

And therein lies the enduring tragedy of the Lubell case. Peterson and Howard probably are right that the liberal constitutional ideals that Harvard Law School historically has defended are as remote from the day-to-day lives of its students today as they were in 1953. With occasional exceptions, the dominant influence on law students' actions remains the employment market, and not the moral imperatives underlying our constitutional guarantees.

Jonathan Lubell's exoneration is important less because it reaffirms deeply held liberal political values than because it reveals anew how distant these values are from modern legal education. Past wrongs should be righted—unless, of course, they "impinge" on the *Law Review*'s publication schedule. □

ORGANIZING THE MILITARY

PROS AND CONS OF G.I. UNIONS

EDWARD F. SHERMAN

The American military has been through a lot in the last dozen years—an unpopular war, racial turmoil, desertion, drug addiction, corruption and war crimes—but nothing has so disturbed it as the possibility that its personnel might join a union. When the specter was first raised in 1967 by the organization of a Marxist-oriented "American Servicemen's Union," military commanders threatened to court-martial for unlawful conspiracy any men who joined it or associated with its members. Secretary of the Army Resor swore, "We are not going to allow unions in the Army," and a variety of official actions were taken, ranging from discharge of activists to programs designed to eliminate the desire for unionization. But all this was only preliminary skirmishing compared to the reaction last year when the 325,000-member American Federation of Government Employees (AFGE) announced it was considering membership drives in the armed forces. Senators Thurmond (R., S.C.) and Stennis

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(D., Miss.) introduced bills making it a crime for the 2.1 million active members of the military (plus thousands of civilian Department of Defense employees who are reservists) to join or recruit for an organization that would represent them on grievances or conditions of employment.

By raising the alarming, if improbable, prospect of "shop stewards in fox holes," Thurmond sailed his bill (S. 274) through the Senate last fall, 72 to 3, a lopsided vote reflecting the absence of any effective pressure to counterbalance that of the military establishment. (Organized labor was split on the issue, with George Meany on record as opposing military organization.) Meanwhile, Secretary of Labor Ray Marshall beat a hasty retreat from his statement during confirmation hearings that he "might be amenable to having some kind of representation by the soldiers in making the rules that govern their working conditions," and Secretary of Defense Harold Brown expressed total opposition to military unions. The Department of Defense, presumably to head off the Thurmond bill in which it detected constitutional flaws, promulgated regulations last fall that somewhat limited the ban on membership and organizational activities but nevertheless severely cut back on a soldier's right of association and free speech.

While this storm was blowing, and no doubt because it was blowing, the AFGE membership voted in a referendum last fall not to pursue military organization. But this did not stop the counterattack that was launched when the union announced its interest in the idea, and the result may be that members of the armed forces will find themselves worse off than they were before the issue was raised. The Thurmond bill—and probably the DoD regulation—are broad enough to forbid not only traditional labor unions but also many organizations which are involved only in political action, protection of civil liberties and lobbying. Not since the National Labor Relations Act was passed in 1935 has there been such an overt government assault on the rights of workers to join economic associations. And not since the late 1960s, when court suits and administrative changes resulted in broader recognition of First Amendment rights in the military, has there been such a threat to suppress individual rights in the armed forces. This issue constitutes perhaps the first occasion since the war ended in Vietnam when militaristic tendencies should be subject to public debate.

Military unionization is an inflammatory idea, and easily misunderstood. Typical of the press response to the AFGE's proposal were editorials in *The Washington Star*, warning that "rules that govern bargaining between management and labor in industry or in federal civilian employment cannot be imposed on military organizations which are necessarily authoritarian," and in the *Louisville Courier-Journal*, declaring that "the principles of union democracy and collective bargaining, however valuable in civilian society, clearly are incompatible with the discipline and chain of command essential to the military."

These reactions are not unlike the general resistance to public employee unions of only a few years ago. The National Labor Relations Act of 1935 excluded employees of federal, state or local governments from coverage in the belief that public service demands undivided loyalty and that by representing government workers unions would gain a dangerous hold on the nation. The struggle went on for years, until in 1961 President Kennedy, fulfilling a campaign promise, appointed a task force that recommended the recognition of federal employee unions. He thereupon issued an Executive Order that permitted recognition of employee bargaining organizations, but withheld the right to strike, and authorized advisory arbitration as the last resort in a negotiated grievance procedure. A high percentage of federal employees have now been unionized, and a 1967 review by a committee appointed by President Johnson noted substantial benefits, including improved communications, increased participation by employees in determining working conditions, and greater continuity in the labor-management relationship.

State and local government employees have also been unionized—including the paramilitary police, firemen and prison guards. One of the most telling signs of change was the announcement in 1977 that FBI agents in a number of field offices have begun talks with the bureau about joining organizations for collective bargaining.

The Netherlands, Sweden and West Germany allow military unions. The Dutch union, the VVDM, was founded in 1966 and now represents about 60 percent of the noncareer enlisted men in the armed forces. The military is not legally obliged to bargain collectively, but it has negotiated with the VVDM on pay and working conditions.

Originally a product of reformist impulses in the 1960s, the VVDM has become more establishment-minded as time has passed. However, it still concerns itself with more than "bread and butter issues," and its position continues to be that the Dutch military (made up of personnel drafted for fourteen-month tours under a universal military training plan) should reflect democratic principles and not become isolated from the rest of society. It is currently working for a revision of military justice to limit the summary punishment powers of commanders, for an increase in pay to the level of the minimum wage in civilian society, for replacing mandatory barracks meals with a voluntary cafeteria system open to all ranks, for "Employee Committees" to deal with grievances, and for similar reforms that directly affect life in the army. There is no right to strike, but the VVDM has conducted off-post demonstrations and concerted actions in the barracks such as refusing to eat in the soldiers' mess, mass sick calls and submission of petitions to commanders. Activity of that sort is what sends shudders down the backs of American commanders.

Reactions to the Dutch military vary. It is often cited in the United States as a horrifying example of what unionization could mean here. "Holland's soldiers," writes one columnist, "look like an army of hippies. They don't press their uniforms, shine their shoes, salute their officers." An American official, asked to assess the various NATO forces, described the Dutch as "very intelligent, except that you have to give them a rational

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explanation for every order." Many Americans were appalled to hear a Dutch battalion commander say on *NBC Weekend* (August 28, 1975): "I am speaking personally, you understand, but the best kind of army we can have is where a soldier can say, 'No, I will not do that because I do not believe in it.' Ideally, soldiers should have the right to elect—and dismiss—their officers."

On the other hand, NATO Commander Gen. Alexander Haig has stated that, if he ever had to go into combat, he would feel good having Dutch troops on his flank, and the Dutch received high ratings in joint NATO exercises. The precision and bravery with which the long-haired Dutch soldiers executed the relief of a train taken over by terrorists last year considerably improved their public image.

Sweden, although it has the longest history of military unions in Europe (the warrant officers' union was founded in 1907, the NCOs' in 1925, and the officers' in 1921), does not yet permit the unionization of enlisted men. This may be so because, under the Swedish universal conscription system, most enlisted men serve only six months of active duty. And there may be less pressure for a rank-and-file union because the Swedish military is one of the most liberal in the world in terms of democratic processes and concern for working conditions. Conscripts do meet in groups each year to look into such matters at duty assignments, promotions and efficiency reports.

The three professional unions were granted in 1965 the same bargaining rights as are enjoyed by civil servants in Sweden. The military must bargain with them on "negotiable questions," chiefly economic, but not on discretionary matters such as task assignments. In assessing the success of their bargaining, Swedish sociologist Annika Brickman notes that pay levels, previously rather low, have been raised and inequality between ranks reduced; the right to use leisure time as the individual wishes has been established; housing and equipment have been improved; and integration of the three groups has been achieved, including mess halls and other activities. In Sweden, moreover, the "unthinkable" has actually occurred—the military unions have been given the right to strike, though they have never used it. However, a special tribunal, the Civil Servants' Board, may decide that any action, including a strike, is dangerous to society and, pursuant to complex limitations, may prohibit it.

West Germany also permits government negotiation with representatives of military personnel, although the most successful organization is an establishment-oriented association that some might call a company union. Shortly after the re-establishment of the Bundeswehr, the Federal Armed Forces Association (DBV) was formed to represent the vocational, social and economic interests of military personnel. Out of armed forces of 495,000, it has a membership of almost 200,000; of them 40,000 are officers. About 100 members are detached from their units to conduct association business, including negotiation with the government. There is no right to strike.

In the mid-1960s the Public Services, Transport and Traffic Union (OTV) began to sign up German service personnel. The military resisted at first, but in 1966 the union gained the right to recruit members in barracks, whereupon three high-ranking generals retired in protest. The OTV now has about 4,000 military members, including several generals. Its inability to win members away from the DBV appears to be the result of service personnel's general satisfaction with conditions in the Bundeswehr.

The experience of these European countries is instructive but certainly not determinative in judging whether unionization is compatible with the structure of the American armed forces. Two primary concerns are usually raised in opposition to unionization here: its effect on the defense budget and on military discipline and order.

Sixty percent of the Defense Department's budget now goes for pay and pensions, and some Congressional leaders see the volunteer military as a "sinking ship that is becoming increasingly costly to keep afloat." The possibility that unionization might produce demands for still higher pay has created strange bedfellows, bringing those who favor a decrease in the defense budget into camp with the military establishment in opposing the union movement. The pay rise brought about by the switch to voluntary enlistment amounted to a 193 percent increase in the lowest enlisted grade between 1964 and 1973; it was an essential step toward both efficiency and social justice. However, the villain in the swollen military personnel costs is not the pay of enlisted personnel (which begins at a modest $6,915 a year, including housing and food allowances) but the high retirement benefits enjoyed by career officers and NCOs. The military pension program—permitting retirement at half pay after twenty years or at three-quarters pay after thirty years—is one of the most generous in the world. Today, a million retired officers and NCOs are receiving $10.2 billion a year, and it is estimated that the cost will rise to $35.7 billion by the year 2000. When military pay was notoriously low and life expectancy shorter, early retirement was a justifiable inducement and reward, but half pay for life at age 38 is today an inordinate drain on the public treasury. A Presidential commission recommended last month that retirement at three-quarters of base pay only be allowed after thirty years of service at age 55 and that half-pay pension after twenty years be paid at age 60. The strongest supporters of the present pension terms are the quasi-official military-professional organizations which largely represent career personnel (the Association of the U.S. Army, Air Force Association, and Navy League). Ironically, the Thurmond bill does not affect them because, although they lobby and use their entree to the command structure on behalf of their members, they do not seek to provide formal grievance representation or collective bargaining. However, their effectiveness on behalf of career personnel is one reason why the lower enlisted ranks are interested in unionization.

It seems unlikely that a union would be able to deliver much of a pay increase in the present economic

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climate. Current military pay scales do not seem unfair, given that most enlisted men are in their teens or early 20s and that under the revised G.I. Education Bill the military puts up $2 for every dollar the individual spends on his or her studies (up to $5,400). Like other public employee unions, a military union would find that Congressional control of appropriations puts severe constraints upon the ability to extract higher wages.

A military union's representation of its members could be handled either by informal consultation with DoD officials or by formal collective bargaining. A union would obviously prefer the latter, and the AFGE stated in its original announcement that it would press for legislation to allow collective bargaining. However, two experts in constitutional law whose opinions were solicited by Chairman Stennis of the Senate Armed Services Committee—former Solicitor General Erwin Griswold and Texas Law Prof. Charles Alan Wright—testified that, although the flat prohibition on associational rights in the Thurmond bill raises constitutional questions, Congress could legislate to prohibit collective bargaining (or strikes or other harmful union activity). If that is the case, it is still quite possible to achieve many of the benefits of unionization through the informal consultative approach. That essentially is what the Association of Civilian Technicians does when it represents members who are not covered by collective bargaining legislation.

And whether or not collective bargaining is appropriate in the military context, unions could present the grievances of enlisted personnel to the proper authorities. A recent study by the consulting firm of Kramer Associates, Inc. has found that public employees join unions not so much for better pay, benefits, or working conditions as for protection against arbitrary management actions. By comparison with Western European enlisted personnel, the American soldier has little role in determining work policies and no effective way to process grievances. The rank and file feels powerless, hence frustrated and hostile, in the face of an unyielding, or perhaps merely neglectful, bureaucracy. The extent of the problem was brought home by President Ford's clemency program for deserters which found that a considerable percentage of desertions were due to military misfeasance or malfeasance.

The principle institutionalized mechanisms for processing grievances in the military have not worked well, mainly because they are subject to command pressures and the complainant has little access to adversary assistance. The "Inspector General," an officer appointed by the commander to investigate complaints and grievances, often lacks sufficient independence, initiative and resources to resolve the problems of enlisted personnel. An "Article 138 complaint" may be made against any superior and must be forwarded to higher authority for investigation and evaluation. But this device is little used, because it seldom works. It is generally felt in the ranks that superiors are unwilling to rule against one of their subordinate officers or NCOs. Perhaps the most promising means of grievance resolution—"G.I. Councils" and "Equal Employment Opportunity Officers" (the latter created during the racial turmoil of the early 1960s) were never adequately staffed and have been allowed to wither away in many units.

One of the skills that unions have developed over the years is the resolution of grievances and disputes by procedures that range from mandatory negotiation and ultimately arbitration to informal consultation. The latter would less disrupt the military authority structure, permitting officials and commanders to retain the final decision, but providing a mechanism for discussion and the airing of views that does not now exist. However, the ultimate question here—as with other union activities—is whether union membership would dilute the loyalty owed to the commander and weaken the readiness to obey.

It seems likely that there would be some displacement of the authority now held by commanders if unions were to process grievances and work to raise the pay and improve the conditions of their members. To the extent that service personnel could turn to a union for expert advice and representation, command authority would be reduced. But the view that authority must be absolute is no longer consistent with prevailing attitudes in the American armed forces. Authority has been widely dispersed among a multitude of officials, many of them civil servants working alongside persons in uniform. The military has come to accept managerial doctrines which, in the language of sociologist Morris Janowitz, represent "a shift from authoritarian domination to greater reliance on manipulation, persuasion and group consensus." West Point leadership texts now contain references to the anxiety and maladjusted behavior produced by excessively tight discipline, and calling for "consultative" and "participative" management not unlike that of business organizations.

The military now tolerates a degree of pluralism that would have been unimaginable in World War II. A high percentage of service personnel live off-post, working in an essentially 9-to-5 job environment. Those living on post often have private rooms and are not troubled by reveille or bed checks. A new class of enlisted men, called specialists, came into being after the Korean War; they perform technical jobs and are not placed in a troop environment. Only about 10 percent of service personnel have primary job descriptions that require combat skills and, as shown by the opening up of more assignments to women, the troop environment has become less important. The quality, pay and conditions of military life and civilian life are growing steadily more similar.

Sociologist Charles Moskos believes that this convergence has slowed in the 1970s, but sees a "plural" model developing in the military, with certain functional areas, such as the highly technical Air Force, growing more like civilian activity, while others, notably the combat-oriented Marine Corps, hold closer to traditional training and regimentation. If that analysis is correct, unions would have to recognize the differences, and it might well be desirable to write into legislation express limitations on the union's role in combat and under exigent circumstances. But it appears that any union activity which

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genuinely threatened order and discipline could be met under existing criminal offenses or with narrowly drawn administrative regulations, rather than by an absolute ban on union membership.

The underlying thesis of the Thurmond bill is that the mere act of joining a union subverts the loyalty a soldier owes to the command structure and that the combined effect of union membership is inherently destructive of good order and discipline. The role of loyalty in achieving military efficiency is a complicated matter. No doubt, respect for and trust in a superior makes it easier to carry out his orders, but slavish personal loyalty and unthinking obedience are no longer the goals of military training. We now have serious doubts that absolute loyalty to abstract causes or uncritical devotion to superiors has much to do with good military performance; Gen. S.L.A. Marshall's view that closeness between peers as "groups of friends" is the most significant factor in battlefield motivation is now widely accepted. If unionization produces a greater sense of solidarity with fellow workers, it should strengthen, rather than weaken, the peer-group bond. Modern man is a compartmentalized animal and there is little reason to believe that service members' identification with a union for their economic interests need undercut their sense of duty. It no longer seems strange to see policemen and firemen who support a union position contrary to that of their employer nevertheless putting their lives on the line during duty hours.

Underlying the absolutist position of the Thurmond bill is some old-fashioned anti-unionism which, though long since rejected in our civilian society, can be dressed up to raise a few fears in the military context. An army captain writing in the *Military Law Review* recently warned that a union is "an organization designed for political and economic power, and all such organizations must continue to acquire this power or decline." Veteran union-antagonist Victor Riesel takes another tack, arguing that union officialdom may not be able to control militants and maverick locals. "The mere signing of union cards," he maintains, "spurts militancy into young rank and filers."

It is hard to imagine a proposal less menacing than that of the AFGE. It stated that it would restrict its activities to legal assistance, lobbying and monitoring of defense policies bearing on military members' welfare, unless and until Congress authorized broader powers of representation or negotiation. Its public positions on defense matters should have pleased Senator Thurmond; it has called for a larger defense budget and taken a strongly patriotic line on national defense issues. Kenneth Blaylock, president of the AFGE, indicated the union's awareness of its limited role in commenting on the frequently raised foxhole specter:

> They're not going to have to deal with shop stewards in the foxhole. You can look at the other public employees in this country—fire fighters, policemen. When there's a fire going on and the captain tells them, "Get in this building and go to floor so and so," they don't challenge that. Those things are excluded from the scope of bargaining. But when they get back to the station and the captain says, "By the way Joe, we're changing your shift and you're going to start working third shift," he says, "No, the contract says I get two days' notice except under these conditions."

Despite the attempts of the AFGE to allay fears by limiting its objectives, it is legitimate to wonder whether any union can be trusted to abide by limitations on its activities, whether self-imposed or statutory. Despite no-strike clauses, public employee unions have sometimes struck. Can the nation risk the possibility of a strike or slowdown which reduces military efficiency? That is not an easy question for union supporters because no categorical assurance can be given. However, such possibilities exist even without union membership, as witness the work stoppages by sailors aboard the *U.S.S. Midway* in 1974 and the *U.S.S. Sterett* in 1975. Unions at least offer formal mechanisms for processing grievances and defusing the anger and frustrations that seem endemic in the American armed forces today. And powerful legal sanctions are available against service members who commit unlawful acts in a labor-management context. They are subject to the Uniform Code of Military Justice, and their failure to come to work or to do their jobs properly subjects them to court-martial for AWOL, mutiny or disobedience. The risk that union power will be used to defy the law cannot be discounted but, as in Sweden where strikes are legal but have never occurred, it seems remote.

Were Congress and the Department of Defense in a less panicked mood, it would be possible to draw up guidelines for union activity to meet even the liveliest fears of unionization. Maj. James Badami concluded in a thesis written for the U.S. Army Judge Advocate General's School that unionization "would serve the best interests of the individual military man and of the United States." He recommended use of the administrative machinery already in existence for collective bargaining by civilian federal employees, with certain restrictions applicable only to the military. There would be absolute prohibitions on work slowdowns, strikes and interference with the military mission. He favored a separate union for each division or comparable-sized unit, with subdivisions for officers, senior NCOs and enlisted men, thus preventing the growth of a union with service-wide jurisdiction and the mingling of the three rank groups. Representatives from each rank would be elected annually and would set policy for the professional union administrators they hired. This proposal looks a bit too much like the West German "company union" for an orthodox union to accept, but it would at least permit the development of economic groups outside the chain of command to provide badly needed professional services for members.

With the vote of the AFGE membership not to undertake military organizing (apparently because of concern that it would commit their resources to a risky and unpopular venture), the impact of the DoD regulations and Thurmond bill will fall chiefly on nonunion organizations to which service personnel belong. (The

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only union directly affected, the Association of Civilian Technicians, appears to be winning its battle to have the House Armed Services Committee remove the membership ban in the Thurmond bill which would force thousands of its members who work for the DoD and are also reservists to drop their affiliation.) Thus, with organized labor largely on the sidelines the issue is now basically one of civil liberties and the proper character of the military in a democratic society.

The Thurmond bill and DoD regulations are laced with legal language, a good deal of it vague, which service members will have to try to sort out to determine whether their memberships and related activities are criminal. The bill forbids membership in any organization which has as "one of its objectives" representation of service members as to grievances or negotiations concerning conditions of service. That is broad enough to include a variety of nonlabor union groups, for example, an informal association formed recently by younger military doctors to try to improve their status and military medical conditions through discussions with commanders and officials. Civil liberties and legal assistance organizations which represent soldiers in approaches to officials would also seem to be outlawed. Although the bill excludes from its ban the right to be represented by counsel in "any legal or quasi-legal proceeding" (the DoD regulation excludes proceedings in which there is "a right to counsel"), providing representation except in such formal proceedings would subject an organization to banning. The DoD regulation limits the membership ban to organizations found to present a "clear danger to discipline, loyalty, or obedience to lawful orders." This may sufficiently reduce the broad sweep of the ban to make it constitutional, although past experience suggests that the military will find it easy to detect a danger to morale or discipline in the most innocuous organizations.

The membership ban is augmented by prohibitions on recruiting and related activities. Under the Thurmond bill a service person, whether or not a member of a forbidden organization, commits a crime by participating in any "concerted action" directed against the government or any meeting or activity on military property in connection with an organization's objective of providing representation. That is wondrously vague terminology for a criminal statute, leaving any G.I. who has the temerity to work with a political action organization at enormous risk. All sorts of traditional free-speech activity could conceivably be covered. The barracks "bull session" could be illegal if it comprehends or results in any form of collective action which could be considered an attempt to negotiate or bargain as to conditions of service.

The DoD regulation attempts to avoid the constitutional problems arising from the bill's broad ban on related activities by forbidding only "collective job-related action" which is intended to, and does interfere with, performance of a military duty assignment. This at least requires that the activity threaten the military in some way. However, even a minor dereliction of a military duty assignment could be attributed to the activity, making it unlawful. Thus any collective action—such as a meeting or distribution of literature—would be a risky business. Even that most traditional of free speech activities—a group presentation of grievances—seems to be prohibited, since the regulation states that communications to members of Congress may be drawn up collectively, but presentations of grievances through military channels must be done individually.

The regulation (and, even more, the Thurmond bill) is likely to have a considerable, chilling effect on First Amendment activity in the military. Since one can never know for sure when membership in an organization or collective activity will turn out to be illegal, the prudent person will avoid all such activity. The big losers are likely to be the kind of ad hoc groups that have formed in the past over a single issue or problem —for example, a company or battalion protest against bad food or arbitrary discipline. Even at the height of military monitoring of dissent during the war in Vietnam, the authorities made little attempt to squelch such activities.

It is not encouraging to think of the surveillance, employment of undercover agents and informers, and use of the subpoena power against organizations that could be resorted to by the military to enforce the DoD regulations. It seems likely that the courts will finally have to decide whether the regulation (and the Thurmond bill if it passes) has swept too broadly in violation of service members' First Amendment rights. The Defense Department points to a recent Supreme Court decision, *Jones* v. *North Carolina Prisoner's Union, Inc.*, which held that union organizing among prisoners in a penitentiary can be forbidden. The Court noted that prisoners had "violated one or more criminal laws established by society for its orderly governance" and had demonstrated some propensity for violent and unlawful behavior. But military personnel are not convicted criminals; they participate fully in society, they vote and pay taxes.

The Thurmond bill is now before several House subcommittees, but there seems little inclination to reconsider the crucial ban on membership activities. Tinkering with the bill relates chiefly to softening its effect on civilian technicians who are reservists, and making the prohibitions enforceable against service members under the court-martial system rather than as federal crimes. One wonders if, some day, we will look back and ask why there was no public debate over the stripping of the right of association from the members of our armed forces. Only a short time ago, in the Vietnam era, there were constant invocations in the press against ever again allowing our armed forces to cast aside our "citizen-soldier" tradition for militaristic values. A *Wall Street Journal* editorial warned in 1969: "A large, inflexible military organization unchecked by strong civilian review, can lead only to a self-perpetuating drain on national treasure, a demoralized citizenry, and foreign policies dangerously irrelevant in a world moving rapidly away from traditional forms of war and diplomacy." The Thurmond bill presents an issue which goes to the essential nature of the military in a democracy. □

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CHARLES KEITH, A SEAMAN

BERNARD D. NOSSITER

The brief obituary in *The New York Times* said that Charles Keith, 62, had been "very active in liberal causes." How Charlie would have laughed at that euphemism. He had, of course, been a key member of the U.S. Communist Party until he was thrown out in 1945 for complaining that the party had put Moscow's interests ahead of his beloved seamen. Thereafter, the FBI agents hung around his railroad flat on East 17th St., hoping Charlie would finger the comrades who had put him to school and betrayed his deepest beliefs. But the FBI knew him no better than the *Times*.

In some ways, Charlie was an archetypal figure of his time—depression, war, cold-war hysteria—and place, Greenwich Village and Union Square. His father (Jewish and a drunk, a combination more common than the folklore admits) deserted Charlie and his brothers when they were small children. His mother died soon after. He was reared in a foster home but his care was really in the hands of Clara Miller, a devoted welfare agency case worker and his lifelong companion. For a spell, Charlie went to Townsend Harris, New York's high-pressure high school, product of a better time in New York City when intellectual merit mattered in the academy.

Charlie ran off to sea when he was about 16 and there his real education began. A seaman, especially a steward like Charlie, has lots of time on his hands. Charlie used his to read everything—Shakespeare, Tolstoy, Shaw, Freud, Lenin and Marx. He was driven by an insatiable need to know, understand and organize experience.

He also organized seamen, who were chafing under an old, racket-ridden AFL union. When a swaggering bosun's mate named Joe Curran "set down" (struck) the *S.S. California* in 1936—to cries of "mutiny" from Daniel Roper, Roosevelt's Commerce Secretary—the party's Waterfront Section moved in. It seized on the swelling discontent in the merchant fleet to create the National Maritime Union-CIO. Charlie held membership card number 3 and, in his early 20s, became the NMU's first education director. The Waterfront Section could spot talent, especially a talent for advocacy.

In the nature of things, Charlie went off to Spain to fight fascism and Franco. Inevitably, he became a political officer in the Abraham Lincoln Brigade, a commissar. He was captured and spent a bad year or so in a Franco prison. But that only damaged his husky, barrel-chested body, cost him some of his curly, brown hair. He was released undamaged in spirit.

When Hitler's invasion drove the Soviet Union into the war on the Allied side, President Curran and the rest of the NMU's hierarchy decided that what had been an "Imperialist War" was now worth fighting. To keep in touch with the shoreside ranks, Charlie had been shipping on tankers that plied the coast. Now he applied for the Murmansk run to carry supplies to Moscow. Like so many others in those waters, he was torpedoed.

Ashore, however, Charlie became disquieted. The NMU's Communist leaders were riding roughshod over the legitimate grievances of seamen to promote uninterrupted service for the Russians. Charlie protested, always within party channels. But "democratic centralism" does not allow protest and Charlie was stripped of his party card. With the war ending, he set about recapturing the NMU from the party bureaucrats and for the rank and file.

His principal ally was Jack Lawrenson, another fabulous waterfront character. Lawrenson was a dead ringer for Errol Flynn and cut a devastating path through the Village salons, saloons and their respective ladies. Curran, a creation of the party and its propaganda, shrewdly saw which way the postwar winds were blowing and threw in his lot with Keith and Lawrenson.

After a tumultuous convention in 1947, masterminded by Charlie, the party's power was broken and the Lawrenson-Keith faction triumphed. The elections the next year were an anti-climax and the union's party leaders—Blackie Myers, Ferdinand Smith and Joe Stack—were sent back to sea and obscurity. The NMU was again in the hands of the seamen.

Not for long, however. Keith and Lawrenson, with their tiresome insistence on workers' rights, on enforcing the contract, were a nuisance to bureaucrats like Curran, to say nothing of the shipowners. Soon there was a new purge, of "purists and Trotskyites." Keith and Lawrenson were thrown out. For good measure, Curran's men beat up several outside the union hiring hall on West 17th St. Charlie was among them. He had lost his parents for the third time and that did something to his spirit.

When I first met him that summer of 1950, I was innocently pursuing an inquiry for the New York Civil Liberties Union. In those strange days, its leaders had decided in advance that Curran had not violated anybody's rights, but I was not to learn this until later. Fresh from graduate economics at Harvard, I was astonished at the clarity of Charlie's mind. He could give shape to the most complex material, relating disparate parts and distilling the essence. He had the synoptic ability of a Schumpeter and the skeptical, analytical style of a John Williams.

Later, I discovered Charlie's greater quality, a heart as big as that barrel chest. Bruised and beaten seamen wandered into Charlie's shorebound galley, the kitchen-dining room on East 17th St., for coffee and courage. Charlie poured out both in an unendingly generous stream. I have never seen such disinterested kindness, affection and love, except perhaps in Jaya Prakash Narayan during the Bihar famine.

Thereafter, Charlie, a rational romantic, threw himself into more lost causes. He failed, of course, to regain worker control of the NMU from Curran and his new

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crowd—"anti-purists" could count on every city and federal institution to support them. Charlie did succeed in freeing his brother Pat from a crushing sentence in Leavenworth. An Air Force finance captain, Pat had been put there after he had been court-martialed for spying. In fact, he had been on a bender in Berlin, woke up to be propositioned by East German security police (after he was softened up with more agreeable propositions), and had been too frightened to report the approaches when he was returned. As always, Charlie amazed his lawyers by finding more law and writing better briefs than they. The appeal succeeded and Pat, who had not yielded to the East German threats, was freed.

To keep alive, Charlie painted houses in the Village. He managed apartments for one of New York's most notorious liberals but quit when he was told to stop accepting black tenants. Always good with his hands, Charlie began buying up and renovating old brownstones. He embarrassed the city by rehousing and returning the tenants he temporarily removed, violating Robert Moses's first commandment of speculative slum clearance. He embarrassed himself by reaping a seven-figure fortune.

Paul O'Dwyer, one of the last genuine radicals in New York, tempted Charlie from his retreat, and Keith managed O'Dwyer's successful campaign for City Council president in 1973. O'Dwyer repeatedly urged Charlie to accept important city posts, but Charlie declined with a soft smile.

Three years later, Keith managed O'Dwyer's losing campaign for the Democratic nomination to the Senate. Charlie was certain that the New York Establishment and press had ganged up on his man to throw the race either to Bella Abzug, an apparatchik and easy prey for the incumbent Republican James Buckley, or to Pat Moynihan, the least radical of Democrats. For once, Charlie's argument was more intriguing than convincing.

His heart broke for the last time on February 15. He might have been a distinguished lawyer or professor, a great housing commissioner, a visionary union leader. He was none of those things. Despite the fortune he amassed without effort, his life was a failure in the conventional sense. But for those he touched closely, Charlie had the rarest of qualities, a capacity to love and evoke love. □

Arson: Business by Other Means

STEVE SLADE

In October, thirty-three men were arrested in Boston on charges of arson, fraud, bribery and murder. State Atty. Gen. Francis Bellotti said the group constituted an arson ring, responsible for thirty-five fires that caused three deaths and $6 million in property damage. The investigators were "shocked," in the words of an Assistant Attorney General, "by the number of respectable people involved." Numerous landlords were indicted, including one charged with two murders resulting from 1974 and 1976 fires. Five attorneys were arrested, as were a former head of the Boston Arson Squad, a retired Chelsea fire captain and a recently retired state police detective assigned to the state Fire Marshal's office. Three public insurance adjusters filled out the ranks of those who, in the words of Bellotti, were engaged in a "huge conspiracy to burn Suffolk County for profit."

The dramatic dawn roundup of so many prominent men and the size of the "conspiracy" grabbed headlines around the country, but the Boston bust is merely the latest and most flashy evidence of the nature and size of a nationwide problem. Robert May of the International Association of Arson Investigators feels that almost every city in the country has an arson problem comparable to Boston's. The South Bronx, where 30,000 buildings have been destroyed by fire in the past decade, has become a Dresden-like symbol of arson.

The real significance of the Boston case lies in the misconceptions it reveals. Attempts to combat arson are limited not only by laws and resources but also by a failure to see the nature of the crime. Arson flourishes partly because of the interplay of insurance and urban decay, but partly also because of public misunderstanding. It has been blamed on no-good tenants, tolerated as a victimless crime, and excused as the last recourse of hard-pressed landlords.

As David Schondras and other members of the Symphony Tenants Organizing Project see it, "arson is a business." STOP was formed to salvage a two-block Boston neighborhood where fire had hit more than thirty buildings in three years. Members took their problem to the state Attorney General. The day after the October arrests, Assistant Atty. Gen. Stephen Delinsky backed their definition of arson, saying that "forces of greed" were behind the fires. "The businessmen, lawyers and property owners by their greed, willingly and knowingly, hired, counseled and procured the arsonists in total disregard to any human compassion to the men, women and children who inhabited the apartments, tenements and three-deckers that they owned and managed," said the man who headed the investigation. A modern Clausewitz might call arson "a continuation of business by other means."

The Boston investigators described a pattern similar to the one Robert May had outlined as typical across

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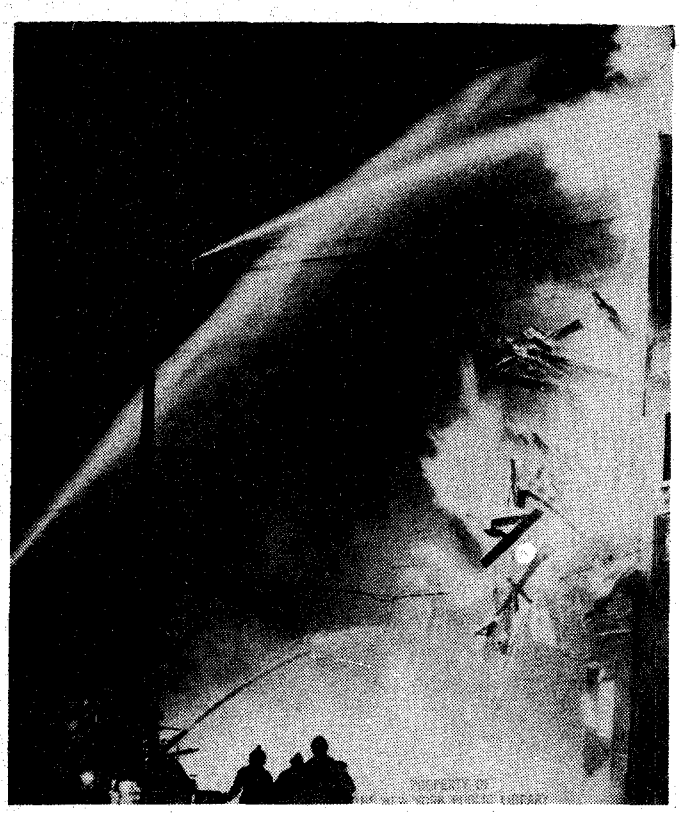

the country. Property is bought in a decaying inner-city neighborhood at a low price; it then changes hands several times in order at the least to double a paper price. Insurance is obtained on the inflated price, promises of rehabilitation having been made, and then the fires break out. The profit from the insurance payoff isn't even taxed as income. An apartment building on Symphony Road changed hands six times in four years, the price climbing from $220,000 to $545,000. A month after the last sale the place was burned out. At the time of the fire the building was under a court order to remove eighty-seven housing code violations.

This paper-chase scheme is only one of many routes to arson profit, but all roads lead to insurance dollars and the traffic is growing at a frightening rate. Arson is estimated to have increased 325 percent in the past ten years; federal officials say the "business" annually destroys $2 billion in property. A thousand people die and another 10,000 are injured each year by fires deliberately set.

These statistics only hint at the true cost of arson. Those most concerned use words like "infected" and "cancerous" to describe the way arson eats away at a neighborhood. Peter Bottai, a Symphony Road landlord, says that "the fire reputation is hurting the decent owners in terms of vacancy rates." Cities are deprived of revenue as their property tax is literally burned out from under them. And arson flourishes most in those sections of the inner city that can least afford it. The total cost is estimated to range between $10 billion and $15 billion a year.

Much of the burden for this spreading crime is borne by homeowners whose insurance premiums reflect the growing risk of fire. Insurance companies estimate that 40 to 50 percent of the money they pay out for fire claims goes to arsonists. Approximately half of the home insurance premium increase since 1968 has gone to cover the costs of arson. Insurance officials say these payments now account for about 20 percent of an average home insurance premium.

Arson's most numerous and worst injured victims are tenants. It "is really a civil rights case," says Delinsky. "It concerns poor and underprivileged people being burned out of their homes, and their neighborhoods being scarred." Attorney General Bellotti said the Symphony Road tenants who came to see him "were living in terror. They had been burned out two and three times, some of them, and they were afraid to go to sleep at night. They were desperate because nothing was being done to protect them."

Our society has a way of turning the tables on those who suffer the most. Arson is often, sometimes officially, blamed on what STOP's Schondras sarcastically calls "no-good, dirty tenants." Boston Fire Capt. Joseph Doland told me that "a lot of fires" in the Symphony Road area "were caused by the people who live there." But four of those arrested in October owned property on Symphony Road. The former state police detective was arrested in connection with a Symphony Road fire he had blamed on an elderly tenant's carelessness with cigarettes. He told writers from *The Real Paper* that the fires were caused by "the people that live around there—prostitutes, radicals and homosexuals. I don't have to tell you. One of those guys finds his lover in bed with somebody else, he'll just burn the whole place down." He faces eleven counts of bribery, one count of arson, one count of being an accessory after the fact of arson and two counts of conspiracy. "People were saying it was the tenants who were doing it," says Delinsky, "but it was the goddamned landlords."

Talk of tenant-caused fires angers Schondras. "It's very, very difficult to burn a building down." Tenants don't spend hours hauling gasoline into a building. Accidental fires usually cause minor damage because the smoke triggers a call to the fire department. Arson succeeds because the building has been fixed to burn so quickly that the fire department is too late. Schondras thinks that only class and race prejudice can explain how the dramatic increase in arson has come to be blamed on vengeful tenants, rather than on profiteering landlords. It is a case, he says, "of poor people being taught to blame other poor people for problems caused by rich people."

When tenants are not blamed, the landlord's arson is often excused as a private business matter. There is still a feeling in this country that private property is the owner's to do with as he or she wishes. I can throw my TV set out the window and you can burn your building.

Building burning can even evoke sympathy if viewed as a last-ditch effort to escape financial ruin. The Massachusetts Fair Plan, headed by Gene Lecompte, is widely dubbed "the arsonists's insurance company" because it was created by law to guarantee insurance for properties the profit-making insurance companies wouldn't cover. The Fair Plan aggressively pursues ar-

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son; it joined in the investigation that led to the October arrests. Still, Lecompte told me that we have to ask why landlords "are in these straits." Is the city forcing them to make improvements they can't afford? Have we "created an environment that would force a landlord to burn his property?" State Fire Marshal Joseph O'Keefe says that landlords "are caught between the city which wants improvements and the tenants who won't pay the rent."

Schondras bristles at such talk. He points to fires in the Symphony Road area that came quickly on the heels of court orders to correct massive code violations. And, he asks, how did these buildings get in such rotten shape? His answer is in his master's thesis for Northeastern University, which traces four stages of housing deterioration. Schondras says the stages are an "inevitable" result of large absentee ownership and have been repeated four times since the turn of the century. The first stage is characterized by stable ownership and long-term tenants. Deterioration is slow, largely because landlords take out in profits little more than they reinvest in maintenance and repairs.

"Stages two, three and four can come quite quickly," Schondras says. The slow, steady profit is often cut off by economic downturns; the property is then sold and converted into more units. This second stage is characterized by increased deterioration, higher vacancy rates and a poorer class of tenants. The third stage begins as the increasingly deteriorating buildings are sold to buyers for whom they are "financial chips,"—investments in a portfolio. Under this ownership "everything is done to cut costs"; services are curtailed, repairs are postponed, taxes go unpaid. People willing to live in such buildings have literally no other place to go—pimps, alcoholics, illegal aliens, the elderly poor. "People who can't complain," says Schondras. At this point the landlord bellyaches about the quality of his tenants. The process of decline provides ample evidence for those who want to blame tenants and excuse landlords.

When the fourth stage is reached "something is going to happen" because the deterioration is complete. The building will either be condemned, fall down, or burn. Because insurance reflects mortages, not market value, a worthless hulk can be incinerated into a tidy profit. And if the landord has planned well ahead, boosting the value by "selling" the property to an accomplice, the profit can be much more than tidy. "Arson is the end of a process," Schondras says, "and those people and that process are criminal."

Since insurance is the key to profit by arson, it may be that in insurance lies part of the solution. Various studies have recommended that insurance companies share information more freely, that they exercise greater care about whom they insure and how much insurance they write, and that they more vigorously pursue cases of fraud. Most of these changes will require legislative action and many involve complex trade-offs with other goals, but there is little doubt that ways can be found to make arson a more difficult route to profit.

Insurance and law-enforcement officials agree, however, that arson must be attacked primarily as a police problem. "There is an absolute lack of deterrents out there and everybody knows it," says Bellotti. "Arson is always a very hard crime to prove and, both because of corruption and a lack of motivation and training, it just isn't getting investigated. As a result, it's a growing, moneymaking business."

Arson is part dirty work at the scene of the fire, but mostly paper work and conspiracy. The Boston arson ring was uncovered only after years of investigation by STOP, private investigators, and eventually a thirty-member state investigating team. Resources that substantial are rarely available, and the result shows in low arrest and conviction rates. Only 9 percent of arsonists are arrested, only 2 percent are convicted, and only 0.7 percent go to jail. These rates are about one-third of those for other serious crimes. The arsonist who is caught is likely to be a young amateur: he is the easiest to catch and the least likely to do serious damage. Without more resources and better training, we cannot even be sure how much arson there really is. Most experts feel that national estimates are probably low because too few people have been trained to recognize suspicious fires.

Sustained attempts to combat arson are unlikely until its nature is understood and accepted by the public and law-enforcement officials. Even then, David Schondras says, "it would be a bad mistake to look at arson as a problem isolated from other problems." For him, "arson is a symptom of a serious illness. People jump on it because it's dramatic, because we can see the flames and hear the sirens. What you don't see are the years before the fire when people suffer quietly." Insurance and fires produce a profit from housing that has been made worthless and dangerous. Reforms that reduce the insurance profit will reduce the fires, and so will more vigilant police work. The rotten housing will remain. "Arson," Schondras concludes, "is just one dramatic end result of a multi-year rip-off." □

LETTERS (*Continued from page 290*)

this, all sorts of intellectual problems ensue that could just as easily have been avoided by removing the skeleton in the closet and the ghosts in the machine, neither of which were there to begin with. . . .

It is a serious question whether genocide is a function of development or of backwardness. That was the thrust of my review, as it is of my work on genocide as a whole. My point is that the answer depends essentially on what country, time frame, or situation we are talking about. There is really no general correlation between genocide and any particular form of social system. If there were, problems raised by developmental genocide in Brazil, or backward genocide in Paraguay, would become far simpler. It is in this connection that I raise the issue of genocide in a global context. For only if we can take into account the main forms of states taking lives arbitrarily, can a fair and proper assessment of this dreadful subject be forthcoming. To do otherwise, to smuggle in general theories of political economy in discussing the liquidation of specific populations is, in my estimate, a profound mistake not simply in theory, but ultimately in political practice as well.

Irving Louis Horowitz

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BOOKS & THE ARTS

Blues and the Concrete Truth

BLUE IN CHICAGO, *By Bette Howland. Harper and Row. 183 pp. $8.95.*

STEVE LAWSON

In his remarkable little study, *On Being Blue,* novelist William Gass explored the manifold implications of "blue" in our language and society—sadness, severe cold, water, sky, and so on. Bette Howland throws Gass's shades of blue into novelistic relief, anchored in her working-class Jewish upbringing. To be *Blue in Chicago* is not merely to be depressed, lonely, frozen; it encompasses also the perimeters of the sky, Lake, blue-collar living, blue babies, the blueness of a corpse.

This novel as memoir is a curious blend of personal observation and sociological information, of Chicago grotesquerie and Yeatsian pessimism. Centers can't hold in Howland's Chicago where fear and solitude have been loosed: "The elevated went up in 1893 to trundle ladies in bustles and whalebone to the world's fair. Now it comes pitching round the bend, shooting out sparks, eyeball to eyeball with smashed glass, bombed-out craters, curtains fluttering like torn stockings. At Stony Island, the terminus, it sits and shudders for a while. Nothing around but the prairie." And earlier: "Chicago isn't a city: just the raw materials."

Familial claims, social services, life itself, are all being whittled down here: old people are trundled off to "Homes" while the Mayor plans suburban shopping centers smack in the middle of rotting neighborhoods ("The solution to isolation is more isolation"). In a world like this, one's only defenses are withdrawal, apathy, or a bitter irony, and it's this last option which Howland has elected to use.

The six short recollections making up *Blue in Chicago* are slices of a peculiar world, refracted through Howland's half-sour, half-joyous sensibility. We get lingering glimpses of Chicago from the inside and from beyond the city limits —jobs, entertainment, trouble, social gatherings, getting from here to there, moving through life. The author maintains a delicate stance, partly a detached observer and partly performer within the sphere of her maddening, irresistible family which at times seems to embrace most of blue-collar Chicago.

There are the minor humors: Aunt Yetta and her cluttered apartment ("If you were a fish, you could swim through it"); the mysterious brother-in-law who hides in the bathroom until guests leave; Uncle Rudy's Southern wife Roxanne ("We're liable to ent up in Milwaukee. You know how stubborn Rooty is"); Sadie the lovable looter, "drinking rosé from a shrimp-cocktail jar." And there are complex, heavy figures who lumber through the book like childhood icons. Uncle Rudy, driving the narrator home, stops by his house to show her his wallpaper, his photo albums, his basement. Inexplicably, but touchingly, he fills her arms with a gift of light bulbs, and she suddenly feels closer to him—the distance has been briefly compressed.

The narrator's grandmother is the book's most salient creation, an immigrant from Transylvania to Chicago via Kentucky—half gypsy, with hillbilly superimposed. She lives independently in "the home of the displaced, the disinherited, the uprooted"—Uptown. (The irony of nomenclature.) "Everything gains in value with age but a human life," is the author's bitter observation, and in her grandmother we see this prophecy fulfill itself, then, astoundingly, turn hollow as the old woman rolls an eye at the relatives who wait at her deathbed and demands, "What's there to say?"

Blue in Chicago has a humor which rides the waves of its gloom. Consider the author's evocation of her husband's family tree:

> My children's father descends in a direct line from a Pilgrim who fell overboard during the voyage of the *Mayflower.* "A lustie young man," Governor Bradford describes him, who held long and fast to the halyards, "sundrie fadomes under water," until they hauled him in out of the lurching sea. Since then the family has considerably loosened its grip.

Her own family comes in for some devastating asides: "My father always looks startled—you would too, if you'd been born in the wrong century. . . ." Or: "They say Rosie nagged Herschel to death. He got his revenge. All thirteen children looked like him."

The best writing is of city life, and Howland is particularly deft at locating an urban texture: the beefy types arguing in a bar about the wording of a Kipling poem and stomping off to the library to look it up; the smashed glasses in an old pool of dried blood (whose glasses? whose blood?); the professor whose "brilliance bordered on apoplexy;" the way in which waiting for things, for subways, for people, for action dominates the day. If people are bored, they can go to the all-night movie house, where the customers drift in and out "with strange regularity":

> The seats squeak. Half of them are broken. Eyes slide—oily surfaces in the flickering light. Under folded jackets, in hidden laps, fingers are creeping. Hey. What's this? A hand on my thigh? Out of the dark your neighbor shoots a weasel-faced glance. Slowly, stealthily, with painful efforts at concealment—extra distracting—his zipper starts to creak. Just a little at a time. Same way the ladies in the balcony peel their candy bars.

The book builds to a Buñuelian tableau where, menaced by a young crazy furious at being ejected from a library, the somnolent occupants of the decaying reading-room spring into action:

> Mr. Adorno. He kicked out his chair. His glasses had a dark sparkle. All over the room chairs were scraping. Pensioners rising; sleepers waking . . . They danced up and back and pumped up and down. Old-fashioned boxers with old-fashioned rules. Judge Brady stood firm . . . His back was most honorably arched.

Blue in Chicago, for all its warfare —between black and white, working and middle class, married people and

DRIVING TO MEXICO

Alongside the road
The mountains of the Sierra Madre
Are rising,
Heaving their bony shoulders up
Through the tangled desert.

One day they will throw off
The scratchy blanket of earth
And stand, on impossible legs.
Driving down to Mexico
I hear the thudding of an
enormous heart.

Constance Urdang

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singles, Jews and Catholics, old and young, men and women—and its situation in a "partitioned city, walled and wired," is about their relatedness. The juxtaposition of themes, people and classes bridges the city's isolation and yields meaning, from the graduate student's murder and the cousin's wedding which open the book to the grandmother's passing and grand-daughter's departure which end it. Howland knows how to make these ends meet: "The old woman is dead. My own children are grown. Soon I will be forty. Move over, Mother. I'm in the middle now." Focusing on a Chicago "as blue as distances," she brings the distances into a close-up which nearly dissolves them. □

Historians and Black Families

IRA BERLIN

The specter of slavery stalks the writing of American history. Yet, it is not so much the results of slavery that have preoccupied scholars of late as its effect on Africans in the New World. This concern with the slave, rather than the institution of slavery, can be traced to Stanley Elkins's now classic *Slavery: A Problem in American Intellectual and Institutional Life*, published nearly two decades ago. Using techniques borrowed from the social sciences, Elkins described the dehumanizing effect of chattel bondage on African peoples in the American South. He compared the plantation to the Nazi concentration camps and found that like many of the camp's victims, the slaves had been broken by the system. The middle passage stripped them of their African culture and the "dynamic of unopposed capitalism" reduced them to the stereotype their masters found most comfortable: the Sambo.

Elkins's work gained little notice until the struggle against segregation in the 1960s made it imperative to re-evaluate the nature of the black past. At once, Elkins's Sambo became enmeshed in the ideological warfare of the day. Racists seized it as part of a new historical and environmental justification for Negro inferiority to replace the older and now discredited genetic one. Black militants and their allies wielded Elkins's thesis to demonstrate that American capitalism had indeed produced the worst slavery, at once explaining the present condition of black Americans and justifying their own militancy. Elkins, who belonged to neither camp, continually found his ideas wrenched out of context by opportunists of all persuasions.

Yet, there was something about Elkins's own exploitation of psychological and sociological theories, his wild fielding of analogies, and the shallow historical context of his work that invited this kind of intellectual opportunism. It is not surprising that his work soon fell prey to a master of that school. In 1965, Daniel Moynihan, then Assistant Secretary of Labor to President Lyndon Johnson, was searching for some way to explain the plight of inner-city blacks while, at the same time, promoting significant welfare policy reforms. He did both by pointing to the disorder of contemporary ghetto family life, especially the disproportionately frequent absence of male household heads. Moynihan, like others, saw the deviant nature of black family life rooted in slavery and leaned heavily on Elkins to support his analysis.

The political implications of the Moynihan Report made it front-page news. While the largely commendable reforms were soon lost in the escalating domestic conflict over Vietnam, the controversy over the nature of the black family stayed in the news. And it grew when Moynihan, now Special Assistant to Richard Nixon, coined the luckless phrase "benign neglect" as a means of characterizing Nixon's domestic policies. The report became a lightning rod for criticism of the headlong retreat from the social commitments of the early 1960s.

While much of this criticism was well deserved, some of it descended to the level of name calling, and almost all of it revealed how ideological preoccupations could twist and deform social theory in the absence of firm historical groundings. Thus some critics argued that a high level of female-headed households was commonplace among the urban poor generally and not simply ghetto blacks, while others maintained that the female-headed household was a creative adaption to the conditions of black life. Like the report they attacked, Moynihan's critics cared little for the background of black family life in the United States. They squeezed the facts of slavery to fit their own ideological persuasions and, as a result, destroyed any hope that the real problems of the contemporary black family could be put into historic perspective.

Even before the Moynihan Report and the furor that followed elevated the question of slavery to a central place in the debate over public policy, historians had begun to refocus their energies on the question of slavery in much the way Elkins had formulated it: how did slavery affect the slave? While a variety of forces spurred this renewed interest, contemporary events were especially important. Elkins's portrayal of American Negro slavery as the worst form of chattel bondage fit the temper of the times well enough. The transformation of black activism from an integrationist to a nationalist perspective made it imperative to confront critically the figure of Sambo. Black people and others as well were no longer willing to see the Afro-American past inhabited by Sambo.

At first, the debate over Elkins's formulation turned around the question of resistance and accommodation. Historians scoured the sources for evidence that black people were not willing tools of the slave system. That evidence, of course, was not difficult to come by. In fact, it had already been collected in abundance by W.E.B. Du Bois, Herbert Aptheker, Raymond and Alice Bauer and Kenneth Stampp. They demonstrated that black people were anything but the Sambos their masters would have preferred. Instead, slaves broke hoes, burned barns, pissed in the soup, ran away and, upon occasion, joined violent organized insurrections. If these revolts were few in number in the American South, they were also rare in every society. The picture of the docile, accommodating slave dissolved quickly under this onslaught.

But on second look, the question of resistance and accommodation was a good deal more complicated than it first seemed. The meaning of slave resistance, even flagrant acts of violence against the master of his property, was no more self-evident than any other action. A slave who murdered an overbearing overseer might no more be striking at the system of slavery than a free worker who killed his foreman was attacking the capitalist system. Moreover, the master's ideology allowed them to subsume many acts of resistance within their own world view in ways that strengthened the ruling class. A slave shirking his duties could deprive his master of his services, but he also reinforced his owner's belief that slaves were inherently lazy and needed a master's forceful direction. In short, resist-

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ance and accommodation were two sides of the same coin. Like all reciprocals, they could only exist in opposition to each other. The extended discussion of resistance called forth a more extended discussion of accommodation. Depicting slaves as heroic opponents of their own oppression did not resolve the debate over slavery, although it deepened it considerably. Instead, it merely turned Elkins's views inside out.

What made this heroic view of black life under slavery so unsatisfying was that it changed nothing of the essentials. Seeing slaves as nascent Nat Turners instead of shuffling Sambos was clearly more edifying, but it still left black people reacting to a world they did not make. The idea that slaves played a passive role in American history, indeed in their own history, galled many blacks. Can a people, asked Ralph Ellison, a man whose humanity is too often mistaken for moderation, "live and develop for over three hundred years only by reacting? Are American Negroes simply the creation of white men, or have they at least helped to create themselves out of what they found around them?"

Ellison's words written earlier in response to Gunnar Myrdal's famous integrationist manifesto, *An American Dilemma,* anticipated the direction of historical studies of slavery in the 1970s as scholars tired of the debate over accommodation and resistance. Increasingly, they abandoned these sterile categories to the larger question of Afro-American culture. In doing so, they confronted Elkins again, perhaps really for the first time. How did the circumstances of African peoples on English mainland North America create distinctive patterns of thinking and acting? How did these cultural modes interact with those of the largely Anglo-American white population to determine the actions of black people, create distinctive Afro-American institutions, and perhaps even a distinctive Afro-American personality type?

Even in its present early stages, this inquiry has proven enormously fruitful. It has turned the study of slavery decisively from the master's perspective to that of the slave, as witness the movement of Eugene D. Genovese's work from *The World the Slaveholders Made* (1969) to his magisterial *Roll, Jordan, Roll,* subtitled *The World the Slaves Made* (1974). Along with Genovese, although never quite with his all-encompassing vision and theoretical power, linguists, folklorists, musicologists, anthropologists as well as historians have begun to unravel Afro-American culture, its language, folk tales, music, work ethic and religious ethos. The culture revealed by these researches is no pale imitation of the white man's world. Instead, it is rich and complex with its own internal dynamic and divisions. It had its roots in the quarter and not the big house, and it looked as much to West Africa as to the New World for its origins. Its formative years were those of slavery. Ironically, the nadir of black life in America marked the period of its greatest cultural achievements. The music, folk tales, flexible argot, and rich religious tradition that are celebrated today as distinctively Afro-American were the products of the world the slaves made.

This irony allowed Elkins, who for almost two decades had watched the tumult over his book from the sidelines, to re-enter the debate. Writing in *Commentary,* Elkins asked simply if things were so good, how could they be so bad? If slavery allowed black people to create such a rich cultural fabric, then perhaps the institution was not nearly as dehumanizing as some have maintained. Although Elkins recognized that resistance to exploitation released creative energies to form distinctive cultural identities, he argued that emphasizing the slave's achievement perforce underplayed the brutality of the institution. How then can things be so good while being so bad? How can black achievement during slavery be assessed without letting the master or whites generally off the hook? While Elkins confounds his own argument by equating culture with resistance and psychological damage or social pathology with accommodation, he again raised a problem worthy of consideration not only for historians of slavery but for all those interested in lower-class life.

One of the many virtues of Herbert Gutman's *The Black Family in Slavery and Freedom,** the most recent entry into the debate over slavery, is that it is able to discuss perhaps the single most important achievement of black people during slavery—the creation of a viable kinship system—without reducing the barbarity of slavery. Gutman does this by emphasizing the persistence of African culture in the New World—in this case the generalized idea of the importance of kinship—and seeing culture as a resource on which transplanted Africans freely and continually drew throughout the years of slavery. It is this cultural resource, not the peculiar condition of black people in the New World, that is the source of the Afro-American kinship system. Indeed, for Gutman, the black family grows and takes its distinctive form despite slavery, not because of it.

Gutman's book grew out of the controversy initiated by the Moynihan Report. In large measure, it can be read as a historian's attempt to find the origins of the familial patterns that Moynihan and others argue characterize mid-20th-century ghetto life by tracing them backward in time. But as Gutman searched the historical records of the years following the Great Migration to the North, he could find little to substantiate Moynihan's thesis—no disproportion of single-parent households, no massive absence of fathers, no black matriarchy. He pushed back further, past the 1880 census (the first federal census to register family relations) to the first flush of freedom following emancipation. Here Gutman found evidence of former slaves *confirming* well-established relations, not creating them anew. Thus while black people took advantage of the opportunities of freedom to sanctify their marriages and legitimate their children, the black family was not the product of a social revolution unleashed by the Emancipation Proclamation. Its roots reached deep into slave times.

Like their masters, most slaves lived in families. Slave families were remarkably stable, broken more often by sale or death than by "divorce" or desertion. Slave households were nuclear in form, consisting of parents and children. Fathers played a large and active role, as witnessed in the common practice of naming sons and sometimes daughters for their fathers. But while the slave family resembled that of whites in many ways, it was also significantly different. For example, slaves placed little value on female virginity. Slave women often had their first and sometimes second child by a different man than the one they married. But once a couple settled down, marital fidelity was highly prized. Whites recognized this difference, sometimes to ridicule it, but their remarks often bore a touch of envy. "Slave women have a chance here that women have nowhere else," observed Mary Boykin Chestnutt. "They can redeem themselves—the 'impropers' can. They can marry decently, and nothing is remembered against these colored ladies." The familial values of slaves and their masters differed in other ways as well. White kinfolk, especially the plantation

* *The Black Family in Slavery and Freedom.* By Herbert Gutman. Vintage Press. 664 pp. Paper $6.95.

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elite, commonly intermarried, so that by the end of the 18th century many of the settled parts of the South resembled an enormous cousinarchy. The slave's moral code forbade cousin marriages and Gutman finds this taboo regularly articulated and commonly practiced.

All of this points to the powerful sense of kinship that informed slave life. Gutman argues it was the family that gave black life its resiliency and sustaining power during slave times. Thus children taken from their parents in Maryland, as were thousands during the great cotton boom, were adopted into the families of black people already established in Alabama and Mississippi, just as young folk separated from their parents in the international slave trade had been so adopted generations earlier. These "fictive" kinfolk might be given honorific titles of uncle or aunt to distinguish them from the child's real parents. While the masters ridiculed this practice and turned such titles to their own purposes, behind the screen of ridicule their meaning within the slave community was secure. Slave uncles and aunts became one of the driving forces in slave life, perhaps even the "significant others" whose existence Elkins called into question.

Some may quarrel with Gutman's interpretation of the meaning of honorific titles or even the existence of fictive kinsmen, but no one will again doubt the slave origins of black family life. Using plantation birth lists, Union Army and Freedmen Bureau Records and a host of published and unpublished sources with extraordinary ingenuity and imagination, Gutman documents his case overwhelmingly. In doing so, he has shifted the ground of the debate over slavery from how did slavery affect slaves to how did slaves influence their own condition. In this subtle, but significant emphasis lies the importance of *The Black Family in Slavery and Freedom.*

Gutman thus takes us into the interior of slave life, perhaps the most difficult of the social historian's tasks. In doing so he outlines the questions that the next generation of scholars of slave society must answer. Foremost among these is the origins of Afro-American culture, especially its kinship system, that Gutman brilliantly describes and analyzes. Specifically, what was the nature of the West African culture that transplanted Africans drew upon in creating their own cultural forms in the New World? How did the generalized idea of kinship which Gutman sees behind the growth of the Afro-American family, emerge from the diversity of West African family life? In a suggestive chapter on colonial America, Gutman boldly outlines some of the chronology of this process, but he says little about Africa itself and the dynamic of the process still eludes us. As Gutman's work makes clear, the transformation of African culture in 18th-century America remains the largest question now facing scholars of black life. One of the strengths of *The Black Family* is that it states the problem with such clarity.

Second, what was the nature of the relationship between Anglo-American and Afro-American culture? By putting the locus of creation within black society, Gutman has restored active agency to black peoples in the creation of their own culture. However, he seems to have lost the sense of organic unity that some commentators have argued characterized Southern life. This unity, not only the penetration of European culture into black life but also the penetration of West African culture into white life, goes largely unappreciated in *The Black Family*. Thus Gutman's work calls for a larger synthesis to incorporate his insights about the making of black society into a theory of the making of Southern society.

Finally, *The Black Family* leaves us pleading to know what happened to the Afro-American family in the years since the Great Migration. Whether described as pathology or creative adaptation, the structure and perhaps the content of contemporary, inner-city black family life differs significantly from that of slave field hands and sharecropping freedmen. That difference demands explanation, for in it lie the seeds of public policy for the next generation. The scholar that supplies it will need the imagination and sympathy Herbert Gutman exhibits throughout *The Black Family in Slavery and Freedom.* □

Dread Disease and Legislation

CANCER CRUSADE: The Story of the National Cancer Act of 1971. *By Richard A. Rettig. Princeton University Press. 382 pp. $15.*

HENRY McDONALD

The 1971 National Cancer Act was one of the most ambitious pieces of biomedical research legislation in recent times—"the mightiest offensive against a single disease in the history of our country," as Ann Landers put it. Under the provisions of the bill, not only were expenditures on cancer research to be quadrupled to reach $1 billion per year by 1976 but the organization of cancer research was to be removed from its traditional auspices at the National Institutes of Health (NIH) to allow for a more autonomous "crash program" to be carried out against the disease.

Proponents of the bill, in justifying such an ambitious program, were extremely bold and optimistic in their claims. "Mr. Nixon: You Can Cure Cancer," petitioned the Citizen's Committee for the Conquest of Cancer in late 1969. "There is not a doubt in the minds of our top cancer researchers that the final answer to cancer can be found." Similarly, other organizations and individuals stated that a major breakthrough in cancer was just around the corner and that all that was needed to turn this corner was "the will"—backed, of course, by money and brains. Such reasoning was carried to an extreme in House Concurrent Resolution 526, which declared: ". . . it is the sense of Congress that the conquest of cancer is a national crusade to be accomplished by 1976 as an appropriate commendation of the 200th anniversary of the independence of our country."

In assessing such statements nowadays, it is instructive to note that the National Cancer Act is not the only ambitious piece of cancer legislation this country has seen. From Senator Neely's straightforward proposal in 1927 that Congress authorize an award of $5 million "to the first person finding a practical and successful cure for cancer," to Representative Brinkley's more recent bill imposing a "cancer eradication tax surcharge" on all individual and corporate income, an air of the fantastic has always pervaded cancer legislation. Prior to the middle 1960s, however, the research community was able to put a brake on such fantasy by dictating its views to a largely submissive Congress; with the 1971 National Cancer Act, biomedicine's privileged arrangement with Congress was overturned. Despite opposition to the bill by the NIH and virtually the entire biomedical research community—which argued that a major breakthrough in cancer was *not* "just around the corner" and that therefore

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a "crash program" to cure cancer might only harm the integrity of more basic research—the National Cancer Act sailed through Congress with its ultimate passage never really in doubt.

How and why this happened is the subject of Richard Rettig's careful and informative analysis, *Cancer Crusade: The Story of the National Cancer Act of 1971*. Addressing himself to the "politicization" of biomedicine, Rettig throws into sharp relief the riveting spectacle of a scientific community unable to articulate itself politically and a Congress intoxicated with its own "dreams of reason."

Rettig makes it clear that the scientific community's failure to impress its views on Congress was due in large measure to its own political inexperience. In the days when James Shannon was director of the NIH (1955-68), the health research community was often granted funds by Congress in excess of what it had requested; biomedicine was regarded, with happy illogic, as an arcane body of knowledge deserving unqualified support for its practical benefits to society. With the late 1960s, however, came a new age of accountability, in which researchers were called on to justify the moneys they were granted. The biomedical research community was thrust into "a condition of political orphanage" (as Stephen Strickland says in *Politics, Science, and Dread Disease*); it was required to bargain for those privileges it had up till then been granted without question. The research community's lack of experience in this area is one explanation why, despite vehement opposition to the Cancer Act, it produced no "detailed critical response," as Rettig says, to the provisions of the bill.

There is also, however, another explanation—one which becomes clear through consideration of just what such a "detailed critical response" might have included. During the debate on the Cancer Act, one of the key assertions made by proponents of the bill was that much medical progress had already been made against cancer and that all that was needed to dramatically increase this progress was a more concerted, large-scale effort. Surely a telling blow would have been struck against this assertion by noting that cancer survival rates, which are a crude measure of the efficacy of medical treatment, have shown little and in many cases no improvement since the 1950s (see *End Results in Cancer, Report No. 5*, the National Cancer Institute, HEW, for the most recent statistics, as well as Daniel Greenberg's analysis of the earlier data of *Report No. 4*, published in the January/February 1975 issue of the *Columbia Journalism Review*).

These statistics on survival rates, combined with others showing that most cancers are environmentally induced, would seem to argue that the most effective answer to the cancer problem, at least in the near future, lies not in the development of new medical techniques but in the application of environmental and preventive measures. Unfortunately, this aspect of cancer control has received little priority under the provisions of the Cancer Act. As Rettig says, "There is only a small scientific community involved in cancer epidemiology and carcinogenesis research, thus there is no strong research clientele group pressing for action. The pressure for action has emerged as much from publicity and public opinion about egregious instances of chemically induced cancer as from normal decision-making channels."

A great deal of courage would have been required for the research community to oppose the Cancer Act by claiming a higher priority for environmental programs. Such a position, besides endangering the funding of medical research, would have inevitably brought the research community into "conflict with powerful chemical firms and a powerful industry," as Rettig says. Yet, in failing to take such risks, the scientific community harmed itself in the area of its greatest concern—in its freedom to conduct basic research unhindered by bureaucratic goals and dictates. Although the Cancer Act stopped short of giving the Cancer Institute "separate agency status"—what would have constituted the ultimate crash program—it did succeed in separating to a substantial degree the organization of cancer from other kinds of research. This separation was then and is now seen by many researchers as inimical to the integrity of basic cancer research, which should be free to range widely over a variety of scientific fields.

The scientific community, however, is not the only participant that deserves to be chided for its role in the Cancer Act. Passage of the bill came about mainly as a result of the efforts of a small but powerful lobby of Cancer Crusaders headed by Mary Lasker, the millionaire philanthropist active in the American Cancer Society who has exercised enormous influence in Congress on medical appropriations for decades. This lobby, through a combination of a "highly publicized . . . dramatic appeal to the public and through skillful tactical maneuver within the political process," as Rettig says, largely determined the fate of the bill from beginning to end. Fundamental questions, such as whether or not new cancer legislation was needed in the first place, were never thoroughly discussed; opinion was manipulated so as to make rational debate impossible. Thus, for example, in April 1971, when the bill was in danger of getting bogged down in the Senate, Ann Landers, prompted by her friend Mary Lasker, wrote a column appealing to her readers to support the Cancer Act. The result of this column, as well as ads taken in newspapers by Mrs. Lasker, was that more than 1 million letters poured into the Senate urging approval of the bill. As Rettig notes, "Senators who had been opposing the bill became alarmed and increasingly fearful of being depicted as 'in favor of cancer.'" The result was that within a few months, the Senate version of the bill was adopted by a vote of 79 to 1.

What is likely to be the future of the cancer program? Rettig makes his recommendation about what he believes *should* happen in the Afterword; "the Congress should . . . conduct a thorough, full-scale review of the entire program and its accomplishments." Yet, as Rettig notes, the cancer program has been routinely reauthorized each time it has come up since 1971 and "it is extremely unclear whether the Congress would find any incentive to conduct such a review. There are political benefits in favoring the cancer crusade and perceived costs in criticizing it."

It is not, however, merely political considerations that might prevent a serious revaluation of the cancer program; a more important and more general factor is the extraordinary fear of cancer that grips our culture—a fear present not just in the public but in the members of the Congress as well. As Rettig notes, "cancer is so pervasive that many members of the Congress have either had it themselves or have a close family member who has." What is destructive about this fear is not so much the fear itself as the way it seeks to discharge itself—not by attempting to alter the environmental and social conditions responsible for the present-day cancer epidemic but by placing faith in the illusory powers of medical technology. Such technology, however valuable when used in a supportive role to environmental and preventive programs, becomes distracting and destructive when treated as a solution in itself. In an age when such visions as a "cure for cancer," "the genetic engineering of man," and even "the conquest of death," are not only taken seriously but seen

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as evidence of "optimism" on the part of those who feverishly conjure them, it is hardly surprising that Congress should let its political judgment be dictated by fear and fantasy. It is possible that Rettig's book, by presenting a critical, yet fair-minded account of the passage of the Cancer Act, may do something to waken that august and sleepy body. □

Sizing Up Robert Graves

ANNE FREMANTLE

Robert Graves estimates that by now he has written 4 million words. He admits that writing is, for him, a compulsion and that he can't take a day off, except for Christmas, or the flu. Now that his two best-known historical novels, *I, Claudius* and *Claudius the God*, both published in the 1930s, have been televised as plays by the BBC in England and Public Television here, taking up thirteen hours of prime time, using a cast of 248 actors and reaching millions of viewers, it is perhaps time to ask: how does Robert Graves rate? Among the great writers of our century? Among the near great? Among the ephemeral? Or just how? Protean as he is prolific, will he be remembered as poet, historian, archaeologist, essayist, translator, religious polemicist, for his travel articles, or for his short stories?

Born in 1895, the eighth child in an Anglo-Germano-Irish family, Graves had by 1929, when his best-selling autobiography, *Goodbye to All That*, appeared, already published two volumes of poetry, a book, *Lawrence and the Arabs* (1927) and three other books. He had also, as he explains on the next-to-last page: "done most of the usual story-book things. I had, by the age of thirty-three, been born, initiated into a formal religion . . . loved unhappily, married, gone to war, taken life, procreated my kind, and been killed" (this twice: once, left for dead of his wounds on the battlefield, once, left for dead at war's end, in hospital, of the flu).

On May 6, 1929, he left his wife, Nancy Nicholson, and their four children, wrote *Goodbye to All That* between May 23 and July 24, then left England for Majorca with Laura Riding, a Russian Jewish poet. There they remained together until 1936, when they were removed by a British ship because of the Spanish Civil War. They were returned to England, which they left for the United States in 1939 at the invitation of T.S. Matthews, who had met them in Majorca. Matthews, for twenty-four years a senior editor of *Time*, has described, in his recent autobiography, *Jacks or Better*, his own sixty-year involvement with Graves, and has given his own estimate of Graves as a writer, and of the extent of Graves's long (thirteen-year) "thralldom" to Laura Riding. Matthews, whose book provides a fascinating sidelight onto Anglo-American social and literary history, considers *Goodbye to All That* "one of the greatest autobiographies ever written, and possibly the greatest account of World War I."

Graves himself, in what he calls a "postscript" to his autobiography, describes, as detachedly as if he were giving a recipe for a stew, why this autobiography was so successful. In *But It Still Goes On* (1931) Graves writes that the book's success did not surprise him, because he deliberately mixed in it all the ingredients he knew were mixed into other popular books. Such as: "meals, murders, ghosts, kings, other people's mothers, T.E. Lawrence, the Prince of Wales, racing motorists, pedlars, tramps, adopted children, Arctic explorers, poets, Prime Ministers" and, best of all "battles." He goes on to specify that "for a book to be popular it has, I believe, to be written in a state of suppressed excitement and, preferably again, against time and with a shortage of money. And the sentences have to be short, and the words simple. And the most painful chapters have to be the jokiest."

The "suppressed excitement" came from the incident which precipitated his flight to Majorca with Laura Riding. According to Graves, Laura Riding jumped out of a fourth-floor window onto the street below, and Graves ran down a floor, and then jumped too. According to the account I heard at the time (literary London was buzzing with the tale) Graves's wife, who was living nearby with their children, had already jumped out of the second-floor window to show Graves how much she loved him, and Laura Riding, to prove she loved him more, jumped from a higher floor. Be that as it may, Graves and Laura departed together, and Graves wrote her a "dedicatory epilogue" to *Goodbye to All That*. In it he tells Laura that: "the end and after is yours." And he goes on: "After which. After which, even anecdotes fail. No more anecdotes. And of course, no more

Anne Fremantle is the author of a history of the Fabians, The Little Band of Prophets.

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politics, religion, conversation, literature, arguments, dances, drunks, time, crowds, games, fun, unhappiness. . . . It is enough now to say that I have endured."

In the 1957 edition of the same book Graves wrote that he was "glad to report that little of autobiographical interest has happened since 1929" though he adds that "the remainder of this story" is "dramatic but unpublishable." T.S. Matthews gives much of the remainder in his book. While excoriating Laura Riding for making his best friend, Schuyler Jackson, leave *his* wife and four children for Laura Riding in 1942, Matthews admits that Laura Riding had "the most brilliant mind I have ever encountered."

Certainly she influenced Graves during their thirteen years together, and the books he published in the 1930s, not only the Claudius books but *Hercules My Shipmate* and *Count Belisarius* may owe much to her. Some of his other historical novels, for example, *Wife to Mr. Milton* and *They Hanged My Saintly Billy* seem more dated now—but whether because of Laura's influence, or for lack of it, it is hard to say.

Certainly the first of Graves's "polemical" books, *The White Goddess*, exhibits what Matthews calls a "mystical and reverent attitude to the mother goddess" which Matthews ascribes to Laura Riding's influence. But it seems at least possible that Graves owes his passionate interest in myth and religion, and his equally passionate distaste for the latter, to the generations of German pastors in his father's family which culminated in his ennobled great-uncle, Leopold von Ranke. Graves calls von Ranke the "first modern historian" and to him he declares he owes his historical method. Von Ranke states: "I am a historian before I am a Christian; my objective is simply to find out how the things actually occurred." Graves's own supposition, that almost all prehistorical peoples started by worshipping a goddess because they were unaware of the biological role of the male in conception, has now been generally recognized and has gained fairly wide acceptance. His retelling of the major Greek myths (in the light of his own discoveries) is at the very least an imaginative tour de force.

During the 1920s Graves was enormously appreciated as the greatest of the Georgian poets. He has always been very much a "poet's poet," admired by contemporaries such as Siegfried Sassoon and Edmund Blunden, as well as by older men such as John Masefield, and Thomas Hardy. In 1924 Graves won a bronze medal for poetry at the Olympic Games. At the time he was still suffering from "war shock" and confessed he was afraid of consulting a psychiatrist lest "the power of writing poetry, which was more important to me than anything else I did, would disappear if I allowed myself to get cured . . . and I would become merely a dull, easy, writer." After his break with his family Graves wrote more prose than poetry, but still he published verse. It is probably as a poet that Graves should be remembered, even the late poems in *5 Pens in Hand* (1958) have the old magic, but it is more likely that the figure he cuts as sage and poet-personality will endear him to readers, at least in this generation. □

MUSIC

DAVID HAMILTON

Most of the publicity about broadcast musical events these days concerns television. It comes in triplicate, promulgated by the press agents and ad agencies for the stations, the performers and the underwriting conglomerates. I don't watch these things regularly (the "visuals" are frequently too distracting),

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preferring to listen to FM simulcasts, but whenever I do I am struck by a fundamental inconsistency that is epitomized in the title of one of the major series: *Great Performances*. It isn't the adjective—sometimes justified, often not —that troubles me but the noun; the performers, not the music, are the focus of the presentation. Although the ostensible purpose of putting music on the most massive medium of them all is surely to reach people who have had little contact with it, very little is done to help them come to grips with the central substance of the art being communicated. In the most extreme case of the live telecasts from the Metropolitan Opera (as well as some of the European opera films), the audience is vouchsafed nothing more than a brief summary of the plot, and only skilled linguists or confirmed opera buffs can have the vaguest idea of what is going on from moment to moment. (An honorable exception was the *Manon* transmitted from the New York State Theatre last fall with English subtitles.)

But what I really want to consider here is another phenomenon, to which much less attention has been drawn: the growth—properly, the recrudescence —of "live" music (including delayed broadcasts, via tape, of "live" performances) on radio. Some of this comprises the aforementioned simulcasts of TV programs (this technique, now fairly widespread, certainly seems the sensible way to circumnavigate the problem of TV sound quality), but much more of it is not tied to TV—fortunately, for the events covered by the visual media, even public television, are rarely of the sort to broaden the musical horizons of serious listeners. From the Met we are not likely to *see* Berg's *Lulu* or Britten's *Billy Budd*, but they are included in the radio series; "Live from Lincoln Center" doesn't bring us Druckman or Carter premières (or even the primarily visual values of John Cage's *Renga with Apartment House 1776*), but such things can be heard on the syndicated taped broadcasts that now circulate from the major orchestras.

And there's a good deal more. National Public Radio makes available a remarkable range of material: university orchestras, contemporary music, piano recitals. Programs from Europe include the Salzburg Festivals and a weekly orchestral program from Holland that consistently includes contemporary Dutch works (do Dutch listeners enjoy a comparable opportunity to keep abreast of American music?). In New York, there is local coverage of concerts by the Chamber Music Society of Lincoln Center (revealing, among other things, how scrappy some of those highly touted performances really are), and occasionally, and unexpectedly, various other things from around the city turn up on the FM band.

The biggest problem, which may be unique to New York, can be that of finding out what is being broadcast. The FM listings buried among the chi-chi and gossip of *Cue* magazine are often inaccurate or uninformative. One station (WNCN) publishes a fairly detailed monthly program magazine, but sometimes specifics are lacking at press time. Our local "newspaper of record," under the rubric "Radio Concerts," indiscriminately lists a smattering of concerts among a random selection of classical disc-jockey programs. On occasion, I have learned about interesting events only by word of mouth. I suspect that in other localities, even though less is offered, information can be equally spotty—especially where a college station is the local NPR outlet; these people simply don't have the money to advertise.

Since one assumes the radio audience for music to be basically more experienced and sophisticated than the TV public, the lack of serious efforts to provide useful information about the works being broadcast is surely less crippling. Still, it would be enterprising of those syndicated orchestras to undertake some system of "radio membership" whereby listeners could subscribe to their program books; given the time delay between concert and broadcast, this shouldn't be difficult to manage (the Boston Symphony broadcasts, for example, are running about four months after the concerts, and the informative, stimulating notes that Michael Steinberg edits for them would enhance any listener's pleasure, as well as provide texts and translations for the vocal works).

The value of this should be evident from the history of the longest-running series of live music broadcasts, those of the Metropolitan Opera, for which the weekly issues of *Opera News* have provided program booklets and created a famously loyal public. In addition, the Metropolitan Opera Guild also provides a service whereby members can order librettos and scores for the broadcast operas. Now that opera broadcasts emanate also from the New York State Theatre, from Chicago, and San Francisco (some of them "live" only locally; then syndicated on tape to other regions), comparable services ought to be available for them (if I were G. Schirmer, now the leading libretto publisher, I would jump into this gap).

One further point is worth making: the sound, on the best of these broadcasts, is quite extraordinarily good—often better than the commercial recordings of the same works by the same performers—at least if one's criterion of good sound is its resemblance to that heard from the best seat in a good concert hall. There's no gimmickry: the instruments stay in one place and maintain a natural perspective without artificial spotlighting. The dynamic range may not be as spectacular as that of current discs (particularly because some stations limit it in the interests of covering a wider geographical area), but that doesn't preclude real impact: I treasure a tape of the Boston Symphony's *Gurre-Lieder* performance from the Schoenberg centenary year, which gives a far more convincing sense of the work's scope than any of the commercial recordings (it's also one of the most committed pieces of conducting Seiji Ozawa has ever done).

In my next column, I shall discuss some of the new music available via radio broadcasts this season. □

INDIGENOUS MUSIC/ Nat Hentoff

Some years ago, in search of what seemed to him higher status, a veteran jazz pianist secured an appointment to the faculty of a university. He taught a course in jazz history, directed an ensemble, and otherwise built an estimable core curriculum in this nation's true classical music. In time, he achieved tenure—a rather astonishing achievement for someone who had spent all his adult life in the normatively insecure field of jazz.

This will be his last year of teaching, however, for, as he told me, "I don't have enough time to play. With all the students I have, and my course load, I've been lucky to have enough time for weekend gigs. And after all, playing is what I'm about. I enjoy the teaching but, like the man said, teaching is not doing."

I asked him if the leap back into insecurity bothered him. "No," he said, "not with my instrument. There's always

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a piano bar. Even when interest in jazz falls off, a piano player can always find a home for a while."

He's right, of course. Even during the jazz depression of the 1960s, when the Gresham's law of music found rock driving jazz sounds out of many clubs, pianists survived. There is something about a piano bar that draws not only the hardier jazz aficionados but also a motley of romantics. The latter may not know the difference between Hank Jones and the owner's son-in-law, but nonetheless find the gently pulsing ambiance of a jazz piano just right for mixing memory and desire with white wine.

If, by some unfortunate turn of life history, you have been deprived of experiencing the small hours looming wondrously in a piano bar, the very best introduction to that urban phenomenon (piano bars are never the same in suburbia) is John Eaton's *It Seems Like Old Times* (Chiaroscuro/Audiofidelity). Eaton, though not the fleeing faculty member above, looks like an associate professor of Chaucer in a New England college. He has long presided over bipartisan trysts in Washington, D.C. piano rooms—an unpublicized fount of grace in a city otherwise barely blessed by that quality.

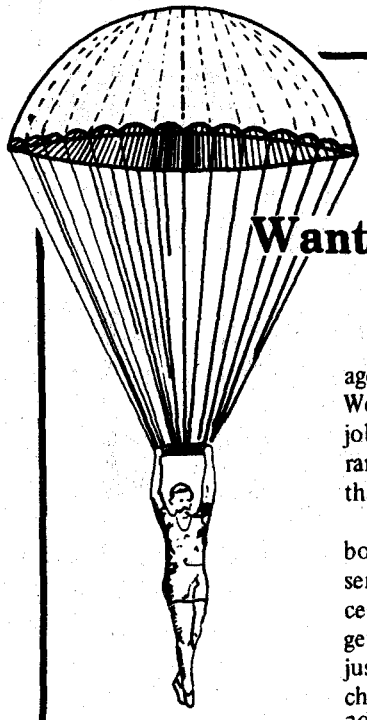
In this solo set, Eaton reveals himself to be a complete pianist—both two-handedly resourceful and a bemused master of just about the whole spectrum of jazz language. He lyrically, quietly and flavorfully moves from ballads to bop to stride to blues. The repertory is judiciously eclectic, and often unexpected—*Brother Can You Spare a Dime?*, John Lewis's *Django*, a subtly regenerated *Lover, Tishomingo Blues*, and a portrait of that most elegant and aristocratic of ancient piano ticklers, *Willie the Lion*.

All this is illuminated with utterly easeful command of technique and harmonic options. Yet this formidable knowledge isn't in the least obtrusive. The taste, imagination, wit, and I would even say wisdom, flow with such naturalness that, as Dick Wellstood (another well-tempered piano-bar player) says, "Eaton's playing breathes." Nor, Wellstood continues accurately, is Eaton a sentimentalist. "His attempts at sentiment result in real emotion."

It Seems Like Old Times, in sum, is one of those albums that are impervious to changes of fashion. This is the real article—ageless nighttime piano. It's worth having around for those hours when you want something unusually mellow to go with one for the road to bed.

A sometime familiar in New York City piano bars is Hank Jones who, however, also works in myriad studio settings and on the road with variegated jazz combinations. While Jones can be as luminously reflective as Eaton, he also excels at crisp, crystalline swinging. Both facets, and others, are manifest in *The Trio* (Chiaroscuro/Audiofidelity) on which Jones is joined by bassist Milt Hinton and drummer Bob Rosengarden. These three paradigms of jazz professionalism—there is nothing they can't cut—have, through all their decades of collective improvisation, lost not a whit of enthusiasm for the risk-taking that jazz demands of even the most seasoned of its practitioners. And that zest for adventure makes *The Trio* as timeless as the worldly meditations of John Eaton.

Out of the piano bar and into a Buenos Aires concert hall, there is now available a 1974 *Concert in Argentina* (Halcyon). On a two-LP set, four absorbingly different, informal virtuosi—Earl Hines, Teddy Wilson, Ellis Larkins and Marian McPartland—roam through one side apiece. Somehow the concert stage is transformed into a piano bar somewhere after one in the morning—with the added kick that this record label is actually owned by piano-bar nomad, Marian McPartland. □



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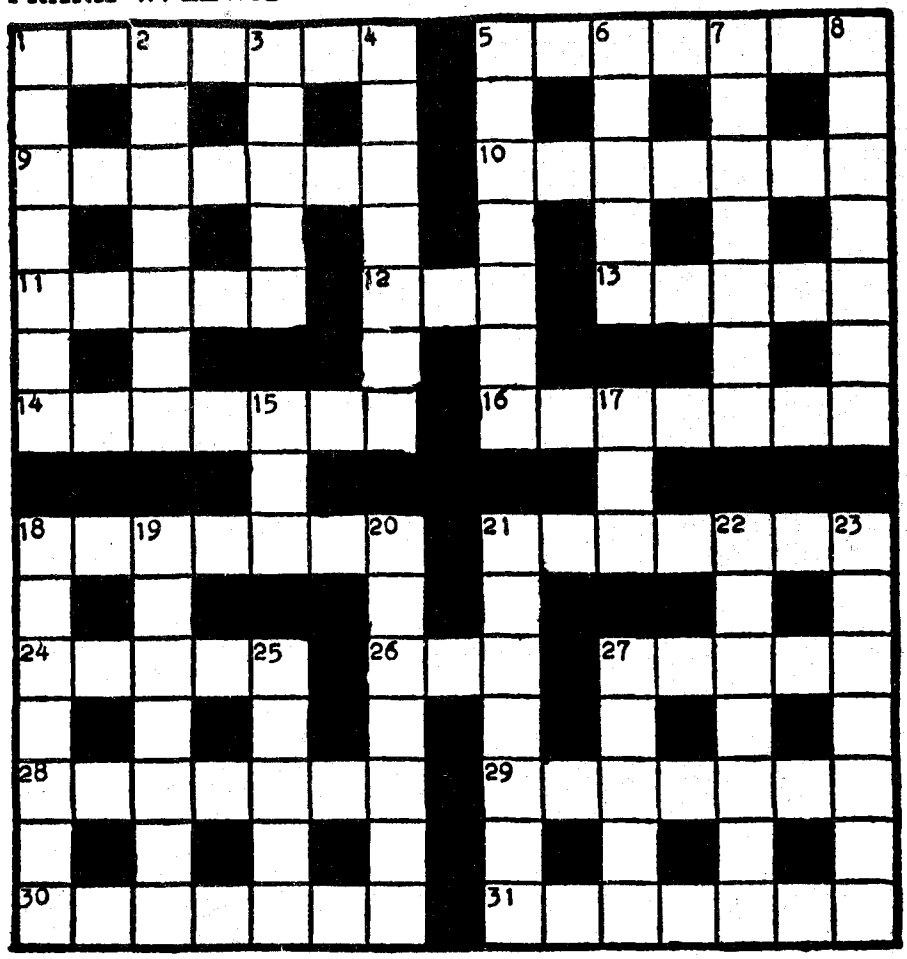

ACROSS

1 Avast! I'm wrecked, but that's characteristic of the old days! (7)
9 Improper dealing, naturally, should be better arranged. (7)
10 In part, forces a bridge demolition. (7)
11 One turns in either direction. (5)
12 and 13 Is it the protective shield that gives the automobile speed? (8)
14 Not the original Scotsman on the road.
16 It's supposed to have a sweet smell. (7)
18 and 1 down Comparatively drunk, like the beat type—as much as possible, that's stretching things! (2,5,2,1,4)
21 Is it in case someone hears again? (7)
24 Overturn without the container being open. (5)
26 and 5 across Not prepared to miss the button so? (3,3,4)
28 It used to contain oats at one time, or possibly began so. (7)
29 You might consider it a man's strength, in a way. (7)
30 The purposes of misbehavior? You need them like a hole in your head! (7)
31 Scraped bottom, possibly. (7)

DOWN

1 See 18 across
2 Being continent, a little shake produces this. (Chosen type, for example.) (7)
3 and 25 down Patches of these are less frequently seen as road hazards, nowadays. (5,5)
4 A little bit of a poem in a common little flower. (7)
5 Sat up with Shakespeare in the garments of a herald. (7)
6 Heath found in American locale. (5)
7 Not conscious? (7)
8 Tributaries, or possibly 20. (7)
15 and 27 across Those not in favor, stay here! (8)
17 and 18 down Possibly the kitty's total makes for the wild types. (Game might better be cautious with them.) (10)
19 One's art is certainly not a faithful representation. (7)
20 Doesn't the weatherman talk of them, being abrasive in the wrong way? (7)
21 What sometimes blows in full color is possibly denied. (7)
22 Toughening up. (7)
23 Come up with how to make a picture of a fish? (That's the way the wind blows!) (7)
27 Toss the capital of England in to possess something. (5)

SOLUTION TO PUZZLE NO. 1717

ACROSS: 1 Split infinitive; 9 Lapse; 10 Machinate; 11 Notions; 12 So there; 13 Escudos; 14 Recycle; 16 Sistine; 21 Open sea; 23 Fancier; 24 Doubleton; 25 Imago; 26 Nutcracker Suite. DOWN: 1 Silence is golden; 2 Lipsticks; 3 and 19 The good old days; 4 Nemesis; 5 Incisor; 6 Idiotic; 7 Irate; 8 Ebenezer Scrooge; 15 Charivari; 17 Insular; 18 Elastic; 19 Offense; 20 Dandies; 22 Erupt.

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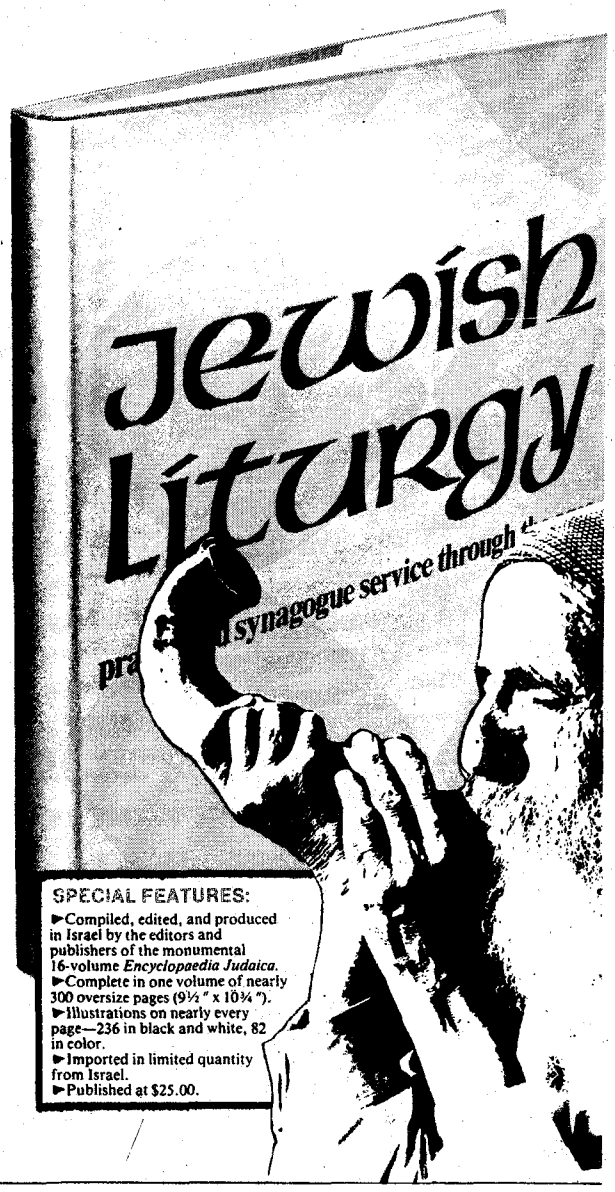
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